

MISHNAH YOMA: NARRATIVE AS CULTURAL THOUGHT

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By

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## ABSTRACT

Mishnah Yoma: Narrative as Cultural Thought

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Mishnah Yoma presents a narrative of the High Priest's actions on Yom Kippur. But the text, in its published form, dates to the early third century, several generations after the Second Temple had been destroyed. This dissertation asks why the rabbis would write such a text.

Many have posited that the Temple narratives in Tannaitic literature are memory-keepers, repeated and written until the day that a new Temple can be built. But I would argue that through the example of Mishnah Yoma, we can read the disciple circles as locations of thought, where tradents projected their imagined scenes of the past in order to work out a new future. What is remarkable is that these projections contain many elements that subvert the primary Leviticus narrative, and thereby offer new ways to accomplish atonement. This dissertation will examine two methods that the Mishnah uses, ritual and narrative, to expand how the community defines holiness. Far from simply narrating a procedure that can no longer take place, the text utilizes the authority of Leviticus (and other biblical citations) to lay the foundation for a new cosmology.

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## Introduction

Mishnah Yoma, a section of a collection of teachings that variously date to the beginning of the Common Era,<sup>1</sup> radically expands the concept of the operation of atonement from the biblical account found in Leviticus 16. These eight chapters provide an expanded account of the High Priest's activities on the Day of Atonement (Yom Kippur) from that found in the Bible. The Tosefta, a collection of teachings contemporaneous to the Mishnah, provides a different set of concerns, but also remains within the world-view of the biblical sacrificial system. Subsequent rabbinic writings take up the themes of the generations of sages whose traditions are repeated in these early texts, creating, to borrow Michel Foucault's term, an archeology of thought that leads to the emergence of nascent Yom Kippur liturgies in the fourth or fifth century of the common era.

The entire collection of the Mishnah was redacted in the beginning of the third century. Whether the Tosefta is earlier or later than the Mishnah is debatable,<sup>2</sup> but taken as a collection of contemporaneous, circulating traditions, we have a base from which we see later rabbinic writers drawing. These writers, in both the Jerusalem Talmud and the roughly contemporaneous poem,

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<sup>1</sup> A thorough review of the claims for early dating of some traditions is made by Daniel Stökl Ben Ezra, *The Impact of Yom Kippur on Early Christianity: The Day of Atonement from Second Temple Judaism to the Fifth Century* (Tübingen: Mohr Siebeck, 2003), 19-28; Ishay Rosen-Zvi, trans. by Orr Scharf, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash* (Leiden ; Brill, 2012), 240; Hermann Leberecht Strack and Günter Stemberger, *Introduction to the Talmud and Midrash* (Minneapolis: Fortress Press, 1992), 154-6.

<sup>2</sup> See, for instance, Alexander's response to Hauptman's essay. Alexander points the reader to page 138 in Jaffee. Judith Hauptman, "Mishnah as a Response to 'Tosefta,'" in *The Synoptic Problem in Rabbinic Literature*, ed. Shaye J. D. Cohen (Providence, RI: Brown Judaic Studies, 2000), 13-34; Elizabeth Shanks Alexander, *Transmitting Mishnah: The Shaping Influence of Oral Tradition* (New York: Cambridge University Press, 2006); Martin S. Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE* (New York: Oxford University Press, 2001).

*Shiv'at Yamim*, add elements to the Temple narrative.<sup>3</sup> Still, it is possible to wonder why these texts describe and debate the details of a rite that was no longer possible after 70 CE. Even more striking, since they are the foundational discussions of the rabbinic movement, there seems to be little acknowledgment that the Temple, in fact, does not exist,<sup>4</sup> and therefore, that its absence provokes a need for communal atonement to occur in a different form.

Many have posited that the Temple narratives in Tannaitic literature are memory-keepers, repeated and written until the day that a new Temple can be built. But I would argue that through the example of Mishnah Yoma, we can read the disciple circles as locations of thought, where tradents projected their imagined scenes of the past in order to work out a new future. What is remarkable is that these projections contain many elements that subvert the primary Leviticus narrative, and thereby offer new ways to accomplish atonement. This dissertation will examine two methods that the Mishnah uses, ritual and narrative, to expand how the community defines holiness. Far from simply narrating a procedure that can no longer take place, the text utilizes the authority of Leviticus (and other biblical citations) to lay the foundation for a new cosmology.

The Dissertation will be laid out as follows. The **Introduction** consists of three parts. First is an inquiry into thinking: how modern theory can color our reading of ancient texts, followed by how the ancient Greeks described thinking, and a proposal for how to trace instances

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<sup>3</sup> Halivni posits a distinction between the Mishnah/Tosefta and later writings as that between apodictic law and justificatory writing. Although the discussions on the Day of Atonement are within a narrative (instead of legal or halakhic style), I would argue for continued innovation—which Halivni seems to reject. David Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard University Press, 1986), 69.

<sup>4</sup> According to Paul Flesher, there are eleven instances in the Mishnah that use the phrase when “the Temple was destroyed” to mark a change from previous times. They are: m. Maaser Sheni 5:2; m. Sukkah 3:12; m. Rosh Hashannah 4:1, 4:3 and 4:4; m. Qiddushim 3:6; m. Sotah 9:12 (twice); m. Menahot 10:5, m. Arakin 9:8 and m. Ohalot 18:9. Paul V. M. Flesher, “When? ‘After the Destruction of the Temple,’” in *Aramaic in Postbiblical Judaism and Early Christianity: Papers from the 2004 National Endowment for the Humanities Summer Seminar at Duke University*, ed. Eric M. Meyers and Paul V. M. Flesher (Winona Lake, IN: Eisenbrauns, 2010), 55–6.

of rabbinic thought in Mishnah Yoma. Secondly, it outlines the philosophy utilized in the dissertation: ritual theory and narrative theory. Thirdly, it presents a review of Mishnaic scholarship that touches on some of these themes, and how the dissertation positions itself within this work. **Chapter One** outlines the cosmological shift that occurs across Israelite texts for the word *kipper* (כפר), a verb that in early texts signified ransom and gradually came to represent atone. The textual discourses for this and related concepts, such as sin and forgiveness, will be shown to contribute to the Mishnah's discussion in its chapter seven. My Chapter One works back from the Mishnaic account to the earlier texts in order to help the reader see the earlier texts as a rabbinic archive. **Chapter Two** is centered on a Mishnaic dispute over the place of the burnt offering (עולה) in the order of the Day of Atonement. It examines biblical and Second Temple literature that depict the עולה, as well as employing ritual theory to analyze the depictions of the sacrifice in some of these texts. The chapter also follows a trans-generational dispute between two priesthood lineages, the Levites and the Aaronides, as a source of the development of separate ideologies, and ultimately, interpretive strategies. **Chapter Three** examines two rituals within the High Priest narrative that are major expansions on the Leviticus account: the increase in the number of immersions and the increase in, and elaboration of, the confession. Each of these rituals are situated within their respective discourse layers and analyzed for their creativity. The **Conclusion** pulls together these aspects to argue for the innovation of the rabbis.

#### **A. Is There a Context for Prayer or Liturgy Post-Destruction?**

Isaiah Gafni, in observing the almost timeless quality of rabbinic writing, suggests that the rabbis exhibit a sense of history, but that the value is on reading and interpreting Torah.<sup>5</sup> In

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<sup>5</sup> Isaiah Gafni, "Rabbinic Historiography and Representations of the Past," in *The Cambridge Companion to the Press*, 2007), 295–312; Isaiah Gafni, "Concepts of Periodization and Causality in Talmudic Literature," *Jewish History* 10, no. 1 (Spring 1996): 21–38. Others who have addressed this issue include Daniel Schwartz, "From Alexandria to Rabbinic Literature to Zion: The Jews Departure from History, and Who it is Who Returns to It," in

his article for *Jewish History*, he speaks of a “disrupted reality,” where “the past thereby emerges as a way of defining or categorizing the present.”<sup>6</sup> A way to read early rabbinic literature then, could be to view the atoning sacrificial system as a concept, a concept *a priori* necessary to any thought about how to create anew. This idea will be explored shortly. Gafni, for his part, is inquiring into the presence of historical causality in rabbinic texts on a par with the classical writers, such as Thucydides. He finds evidence that there is awareness of historiography, but that the rabbis reject it for other enterprises, particularly interpretation.<sup>7</sup>

Instead of viewing rabbinic passages analytically, other scholars have used sources, such as those from Qumran or Josephus, to think of synagogue practice as a concurrent phenomenon with Second Temple sacrifices. In these inquiries, there is a recognition of cultural elements already acting outside the sacrificial system. Among others, Joseph Heinemann, Jakob Petuchowski and Tzvee Zahavy theorized that prayers such as the *Amidah* and the *Shema* were recited before the destruction of the Temple. Petuchowski, basing his theory on the verb *היסדר*, (causing to) order, found in the Babylonian Talmud tractate Berakhot, posited that Rabban Gamaliel “ordered” the *Amidah* blessings from a larger body of benedictions that had already been in use.<sup>8</sup> Zahavy likewise understood the origins of the *Amidah* to be in the Temple, but recited by the priests: he traced the recitation of the *Shema* to scribes in the time of Hillel and Shammai, roughly around the end of the century before the common era.<sup>9</sup> Heinemann posited that fixed prayer began to evolve “hundreds of years before the destruction of the Second

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הציונות והחזרה להיסטוריה הארוכה מחדש, ed. S. N. Eisenstadt and M. Lissak (Jerusalem: Yad Yitshak ben-Tsevi, 1999), see especially page 47 and the use of the benoni form of the verb in Mishnah Yoma, which Schwartz explains as a preference for the “idyllic world” over the real; and Yosef Hayim Yerushalmi, *Zakhor, Jewish History and Jewish Memory* (Seattle: University of Washington Press, 1982).

<sup>6</sup> Gafni, “Concepts of Periodization and Causality in Talmudic Literature,” 34.

<sup>7</sup> Gafni, “Rabbinic Historiography and Representations of the Past,” 300.

<sup>8</sup> Jakob Petuchowski, “The Liturgy of the Synagogue: History, Structure, and Contents,” in *Studies in Liturgy, Exegesis, and Talmudic Narrative*, ed. William Scott Green, (Chico, CA: Scholars Press, 1983), 6-8.

<sup>9</sup> Tzvee Zahavy, *Studies in Jewish Prayer*, Studies in Judaism (Lanham: University Press of America, 1990), 90.

Temple” before coming to the more radical view that these prayers came out of a popular movement centered in synagogue worship.<sup>10</sup> While Heinemann locates the synagogue scene in m. Yoma 7.1 in an area away from the Temple (and thus very early), he views the High Priest’s confessions in m. Yoma 3.8, 4.2 and 6.2 to be authentic to the Second Temple. Indeed, he relies on the Mishnah and other rabbinic literature as sources for his conclusions on these prayers and benedictions, leading to a certain circularity in his positions.<sup>11</sup> His theories, earlier than Petuchowski and Zahavy, mark the beginning of the use of text-critical methods over epigraphical ones, and were groundbreaking for their time.

Lee Levine utilizes cultural artifacts and a variety of contemporaneous writers to counter the claims that communal prayer existed in the Second Temple period. Citing, Philo, the New Testament, and archaeological evidence of the Theodotus inscription (found at the bottom of a well, but assumed to have been attached to the wall of an ancient Jerusalem synagogue), Levine concludes that Torah reading and sermons occurred in synagogues during the Second Temple period, but that none of these sources mention prayer as occurring within.<sup>12</sup> Instead, the town square seems to have been a place for religious ceremonies.<sup>13</sup> Although Levine makes these statements definitively, he does use the successive pages in his work to nuance this position, with instances in Judea where priests hold Temple prayer services, and where there are “hints of group prayer among first-century Pharisees.”<sup>14</sup>

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<sup>10</sup> Joseph Heinemann, *Prayer in the Talmud: Forms and Patterns* (Berlin; New York: De Gruyter, 1977), 13; Joseph Heinemann, *התפילה בתקופת התנאים והאמוראים. טיבה ודפוסייה* (Jerusalem: Hebrew University Press, 1966).

<sup>11</sup> See Langer and Sarason for reviews of his work. Ruth Langer, “Revisiting Early Rabbinic Liturgy: The Recent Contributions of Ezra Fleischer,” *Prooftexts* 19, no. 2 (May 1999): 179–94; Richard Sarason, “On the Use of Method in the Modern Study of Jewish Liturgy,” in *Theory and Practice* (Missoula, MT: Scholars Press, 1978), 145-147.

<sup>12</sup> Lee I Levine, *The Ancient Synagogue: The First Thousand Years* (New Haven: Yale University Press, 2005), 163-2.

<sup>13</sup> Levine, *The Synagogue in Late Antiquity* (Philadelphia, PA: American Schools of Oriental Research, 1987) see pages 15-19, regarding Torah reading and pages 9-10 regarding public square.

<sup>14</sup> Levine, *The Ancient Synagogue*, 167.

Levine takes his position in line with Ezra Fleischer and Stefan Reif. Fleischer published an article in *Tarbiz* in 1990 and was one of the first to challenge the regent idea that prayers had a liturgical history before the destruction of the Second Temple.<sup>15</sup> Instead he proposed that communal, fixed, obligatory prayer originated in Yavneh with Rabban Gamaliel (c. 90 CE). Fleischer maintained that the evidence of prayers prior to this point were the products of sectarian communities, such as at Qumran.<sup>16</sup> Using the testimony of Mishnah Brachot, he argues that obligatory prayers were formulated by R. Gamaliel: by basing his argument on the internal evidence of a rabbinic text, Fleischer revisits some of the pitfalls of Heinemann's analyses. comparing them with Second Temple literature, in somewhat similar fashion to Heinemann.<sup>17</sup>

Reif supports much of Fleischer's work. However, like Levine, he sees ways in which Fleischer could be nuanced. In the first place, Reif argues that rabbinic prayer was not the creative work of Yavneh, but evolved from formulas and benedictions. In an exchange with Fleischer, Reif maintains that the variety of religious expression should be taken into account when reviewing Second Temple practices, eliciting the response by Fleischer that his thesis concerns prayer—not the blessings that were used in proto-synagogues.<sup>18</sup> In his 1993 book, *Judaism and Hebrew Prayer*, Reif raises the question of an appropriate definition for “liturgy,” considering that scholars will naturally bring their experiences anachronistically to their reading of the past. He does not solve this problem, but suggests the concept needs to be stretched to

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<sup>15</sup> Ezra Fleischer, “לקדמוניות תפילות החובה בישראל,” *Tarbiz / תרביץ* 59, no. 3–4 (September 1990): 397–441.

<sup>16</sup> Fleischer., 415.

<sup>17</sup> As Langer has pointed out. See Langer, “Revisiting Early Rabbinic Liturgy: The Recent Contributions of Ezra Fleischer,” 181, 189.

<sup>18</sup> Stefan C Reif, “על התפתחות התפילה הקדומה בישראל,” *Tarbiz / תרביץ* 60, no. 4 (September 1991): 677–81; Ezra Fleischer, “מענה: בשולי השגותיו של ש"ק רייף,” *Tarbiz / תרביץ* 60, no. 4 (September 1991): 683–88.

include “all aspects of worship and prayer.”<sup>19</sup> Reif agrees with Fleischer that prayers were developed by the tannaim: indeed, he also understands that much of the material that the tannaim used derived from individual practice, which they expanded and made part of public prayer.<sup>20</sup> On the other hand, he also recognizes venues such as “public places,” “homes,” and “centers” for “important liturgical activity,” in contrast to Fleischer.<sup>21</sup> Like Fleischer, he doubts the existence of prayer in the proto-synagogues that existed before the destruction. Fleischer did not see a continuity between prayers found at Qumran and the work he attributes to Yavneh. In a 2004 article, Reif, like Levine, finds that enough of a thread exists to cautiously posit Qumran as “a reservoir of prayer traditions from which the Rabbis also drew.”<sup>22</sup>

Daniel Falk points to a question Reif had in the 1993 book: was Qumran exceptional, or were the prayers and formal rituals that we have documented there actually a part of “popular liturgical piety that was common to various Pharisaic and Essenic groups”?<sup>23</sup> A specialist on the Dead Sea Scrolls, Falk notes that scholars are finding that “at least some of the prayers found at Qumran originated outside of sectarian circles.”<sup>24</sup> Falk notes that Esther Chazon has carried this question to the next logical one, how broadly was the practice of public prayer in the Second Temple era? The paucity of textual sources, which, for liturgy, extends to the 9<sup>th</sup> c. CE, makes this a difficult call, and Chazon cautions against the problems of comparisons with later rabbinic

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<sup>19</sup> Stefan C Reif, *Judaism and Hebrew Prayer: New Perspectives on Jewish Liturgical History* (Cambridge; New York, NY, USA: Cambridge University Press, 1993), 71-2.

<sup>20</sup> Reif., 85.

<sup>21</sup> Reif., 76.

<sup>22</sup> Stefan C Reif, “Prayer in Early Judaism,” in *Prayer from Tobit to Qumran*, ed. Renate Egger-Wenzel and Jeremy Corley (Berlin; New York: Walter de Gruyter, 2004), 447.

<sup>23</sup> Reif, *Judaism and Hebrew Prayer*, 66; Daniel K. Falk, *Daily, Sabbath, and Festival Prayers in the Dead Sea Scrolls* (Leiden: Brill, 1998), 5.

<sup>24</sup> The scholars Falk refers to are: Hartmut Stegemann, Hermann Lichtenberger and Esther Chazon. Falk, *Daily, Sabbath, and Festival Prayers in the Dead Sea Scrolls*, 7.

texts.<sup>25</sup> She notes several features that point to a non-Qumranic provenance for texts: use of either יהוה or אֱלֹהִים or reference to the lunar calendar. Additionally, texts that are at variance with Qumran ideology can be excluded, but prayers usually do not contain such material.<sup>26</sup> The weekly liturgy (4Q504-506), the Sabbath Songs, and an annual festival liturgy (1Q34-34bis; 4Q507-509), all can be identified in this way. Chazon says that the provenance of these texts is debatable, however she seems more certain that 4Q503 originated outside of Qumran.<sup>27</sup>

Daniel Falk, however, is not convinced that 4Q503 originated outside Qumran.<sup>28</sup> The *Words of the Luminaries*, 4Q504, and the *Festival Prayers* (1Q34-34bis and 4Q508, 4Q509) share a structure and form, which has led both Chazon and Falk to conclude that they are of the same provenance—and that that provenance is outside of Qumran.<sup>29</sup> The Prayer for the Day of Atonement can be found in 1Q34 2 + 1 6-7; 4Q509 5-6 ii; 4Q509 7; 4Q508 2 1-6; 4Q509 8 1-3; and 4Q508 22 + 23 1.<sup>30</sup> Furthermore, Falk is in agreement with Heinemann that the High Priest's Confession (m. Yoma 3:8, 4:2 and 6:2) originated in the Temple.<sup>31</sup> The difference here is that Heinemann begins with the Mishnaic account, whereas Falk is able to critically assess the Mishnah through Qumran textual styles. Falk, “with less certainty,” concurs with Heinemann that the benedictions listed in m. Yoma 7.1 originated in Second Temple times, carefully side-stepping whether their recitation occurred in the synagogue (or how ancient that institution was situated).<sup>32</sup>

<sup>25</sup> Esther Chazon, “Prayers from Qumran and Their Historical Implications,” *Dead Sea Discoveries* 1, no. 3 (November 1994), 277.

<sup>26</sup> Chazon., 271 and 272.

<sup>27</sup> Chazon., 272 and 281-2.

<sup>28</sup> Falk, *Daily, Sabbath, and Festival Prayers in the Dead Sea Scrolls*, 29.

<sup>29</sup> Falk., 63 and 156. On page 157, Falk notes his disagreement with Johann Maier, who is of the opinion that the *Festival Prayers* are influenced by Yachad (Qumran) theology.

<sup>30</sup> Falk., 162.

<sup>31</sup> Falk. 204; Joseph Heinemann, *Prayer in the Talmud: Forms and Patterns* (Berlin; New York: De Gruyter, 1977).

<sup>32</sup> Falk, *Daily, Sabbath, and Festival Prayers in the Dead Sea Scrolls*, 204, 206.

Falk, following John Trever, dates the *Festival Prayers* to the first century of the Common Era, which means that a prayer for Yom Kippur was extant at the time of destruction of the Temple. Reviewing other prayers and benedictions from Qumran that Falk identifies as having an external provenance, he concludes that the rabbis were not directly influenced by Qumran. Rather, the rabbinic prayers that compare favorably to Qumran prayers “shared similar influences,” namely the priestly and Levitical circles “loosely and informally” connected to the Jerusalem temple.<sup>33</sup>

The Qumran corpus brings us full circle back to the Temple. However, in this view, we are able to apprehend a ritual imagination that is both imbued with Temple motifs, and yet a separate creative force. If prayers were being formulated side-by-side with a functioning sacrificial system, then the identification of the destruction of the Temple as *the* defining moment in the history of Jewish worship is questionable. While the community at Qumran had ideological disputes that forced the development of a robust liturgy, the inspiration for that liturgy came from a milieu in which there was no need for a substitute. This means that prayers—not just private, but fixed prayers—were part of the intellectual processes of the community. At the same time, prayers developed organically from the values expressed by Temple functions. Jeremy Penner, borrowing from Daniel Stökl Ben Ezra, suggests the workings of a Second Temple *imaginaire*, in which a group takes parts of a known phenomenon

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<sup>33</sup> Daniel K. Falk, “Qumran and the Synagogue Liturgy,” in *The Ancient Synagogue from Its Origins until 200 C.E.*, ed. Birger Olsson and Zetterholm Magnus, New Testament Series 39 (Stockholm: Almqvist & Wiksell International, n.d.), 427-8.

and uses them in the creation of something new.<sup>34</sup> I will use the philosophical notion of the ‘concept’ to express much the same idea.

The preceding scholars raise questions that develop the ones with which I began. If the Temple serves as an *imaginaire* that provides a necessary vocabulary for the construction of new thought, then it is understandable that, post-destruction, the rabbis would turn to it. But Reif’s questions regarding liturgy become important here, in part because Fleischer rejects blessings as liturgical material. Although the work that Chazon, Falk and others show, contrary to Fleischer, that fixed prayer was a part of Second Temple practice, Fleischer’s insistence on the importance of the destruction as a catalyst helps us keep in mind that rabbinic innovations only came about when the Temple was no longer operational. If anything, the work of the last twenty-five years begs the question even more: if fixed prayers were a part of the Second Temple culture, and liturgies were part of the rabbinic project at Yavneh, post-destruction, why did the sages spend six chapters of Mishnah Yoma describing a sacrificial ritual that could no longer take place?

## **B. Philosophical Conceptions of Thinking**

Michel Foucault has asked what the “epistemological field” would need to be to bring certain ideas to light.<sup>35</sup> Instead of searching for a discourse on ‘liturgy’—or perhaps, even, a discourse on how to replace the temple sacrifices—Foucault would begin with the “space in which various objects emerge and are continuously transformed.”<sup>36</sup> He holds that a particular space, or situation, actually orders discourses, either by allowing them, or by shaping their

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<sup>34</sup> Jeremy. Penner, “Patterns of Daily Prayer in Second Temple Period Judaism” (Brill, 2012), 69-70; Stökl Ben Ezra, *The Impact of Yom Kippur on Early Christianity*, 9.

<sup>35</sup> Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences*, Vintage books edition (New York NY: Vintage Books, 1994), xxii.

<sup>36</sup> Michel Foucault, *The Archaeology of Knowledge* (New York, NY: Pantheon Books, 1982), 32.

parameters. Thus, a liturgy for Yom Kippur may have simply been disallowed to emerge because of the pervasiveness of discourse on Temple procedures. Looked at a different way, the prominent issues in the Mishnah and Tosefta (such as using a mikveh, times of sacrifices, garments) were discourses working towards the transformation of the concept of atonement. The space where these discourses emerge, resemble each other, and differ, ultimately gives birth to the new idea. The analysis of the discursive practices of a culture, it would seem, is an attempt to document the processes of cultural thought.

Foucault aims to separate individual thinkers from how these voices enter into a broader social discourse, “an anonymous body of knowledge.”<sup>37</sup> In so doing, he separates what he terms the epistemological from the archaeological levels of knowledge, a division which he hopes will escape the critiques of the ‘thinking subject’ introduced by Descartes and developed by Kant, that define the person who acts as the locus of consciousness.<sup>38</sup> Foucault’s endeavor owes the idea of an “a priori of a history” to Edmund Husserl—and Jean Cavaillès’ reading of Husserl.<sup>39</sup> As Foucault puts it, he aims to “define a field in which formal identities, thematic continuities, translations of concepts, and polemical interchanges” frees “the condition of emergence.”<sup>40</sup> The components of this field, in Foucault’s theory, act as statements of theoretical deduction—a priori rules—that “characterize discursive practice.” They are “historical” because they were

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<sup>37</sup> Foucault, *The Order of Things*, xiii.

<sup>38</sup> While he alludes to this problem as he delineates the two levels in the Forward to the English edition of *The Order of Things*, he develops the position of his project within philosophy in his “Introduction,” in *The Normal and the Pathological*, by Georges Canguilhem, trans. Carolyn Fawcett and Robert Cohen (New York: Zone Books, 1989), 7-24. Canguilhem operates within the field of psychology. The theories of Freud and Lacan, especially, have been responsible for a reassessment of the thinking subject.

<sup>39</sup> Foucault defines his use of the term ‘historical a priori’ in Foucault, *The Archaeology of Knowledge*, 127; Husserl introduces the term in Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology; an Introduction to Phenomenological Philosophy*, (Evanston, IL: Northwestern University Press, 1970), 371; Jean Cavaillès, “On Logic and the Theory of Science,” in *Phenomenology and the Natural Sciences*, by Joseph Kockelmans and Theodore Kisiel, trans. Theodore Kisiel (Evanston, IL: Northwestern University Press, 1970), 357–409. See also: Kevin Thompson, “Historicity and Transcendentality: Foucault, Cavaillès, and the Phenomenology of the Concept,” *History and Theory* 47 (February 2008): 1–18.

<sup>40</sup> Foucault, *The Archaeology of Knowledge*, 127.

actually said.<sup>41</sup> The roots of his work about rules and order can be found in both the *Critique of Pure Reason*, in the Transcendental Logic, and in lecture notes compiled by Gottlob Benjamin Jäsche in *Logic*.<sup>42</sup>

The idea that cultures, with all of their interactive components, are the producers of innovation, fits particularly well with rabbinic literature. The name “Mishnah” comes from the verb “shanah” [שנה], to repeat, and is a text compiled from the multi-generational oral teachings of sage communities in the land of Israel.<sup>43</sup> While tradition attributes the gathering of these teachings into the six orders that comprise the work to Yehuda haNasi (Judah the Prince) at Beit Sheari, the repetitions themselves come out of a culture of partially anonymous sayings. As Martin Jaffee notes, the teachings that are memorized and repeated are subject to correction by listeners who also carry these traditions. In the work that has been written down, “our” Mishnah, we see a document where sages correct each other’s memories, and interpretations. We have a unique piece of writing in that the finished document retains the oral remnants of rabbis’ challenges, preserving snapshots of debate. When other rabbinic sources, such as midrash and Tosefta are included, we have the opportunity to glimpse discourse—and the intellectual transformations wrought by it—on a societal level.<sup>44</sup>

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<sup>41</sup> Foucault.

<sup>42</sup> Immanuel Kant, *Logic*, trans. Robert Hartman and Wolfgang Schwartz (Indianapolis: Bobbs-Merrill, 1974); Immanuel Kant, *Immanuel Kants Werke in Gemeinschaft Mit Hermann Cohen [Et.al.]; Herausgegeben von Ernst Cassirer*, vol. band 8 (Berlin: B. Cassir, 1912).

<sup>43</sup> See, especially, Jaffee, *Torah in the Mouth*, chapter four; but also Alexander, *Transmitting Mishnah*; and Chanoch Albeck, *Mavo la-Mishnah* (Jerusalem: Bialik, 1959).

<sup>44</sup> Jaffee illustrates this with a section of Mishnah Yoma (4:6), which he compares with Tosefta Kippurim and Sifra Tzav. Taken together, the sources resemble contemporary Greco-Roman rhetorical practices. Jaffee illustrates this with a section of Mishnah Yoma (4:6), which he compares with Tosefta Kippurim and Sifra Tzav. Taken together, the sources resemble contemporary Greco-Roman rhetorical practices. For a discussion of traditional attributions of the Mishnah’s history versus modern scholarship, see Strack and Stemberger. Jaffee, *Torah in the Mouth*, 132-140; Strack and Stemberger, *Introduction to the Talmud*, 124-6.

Foucault has stated that his goal is to formulate a genealogy (as opposed to philosophy) of the subject which would lead to the modern concept of the self.<sup>45</sup> Or, since his method traces backwards, how the self constitutes the subject.<sup>46</sup> In 1980 lectures at Dartmouth and the University of Vermont, Foucault introduces the Stoic practice of memorizing the precepts of one's teachers, in order to live an ethical life, which he calls "the subjectivization of truth."<sup>47</sup> He then presents examples of examination from early Christian penance rites, where the emphasis shifts from comparing one's actions to *logoi*, or sayings, to a connection between actions and "oneself."<sup>48</sup> Foucault characterizes Christian self-examination as an exercise in "knowing who [one] is," and he singles out two practices *exomologesis* and *exagoreusis*.<sup>49</sup> In the former, a person publicly recognizes herself as a sinner and follows a path of self-punishment. The latter was a monastic ritual in which the penitent confessed to their religious superior, vowing obedience and resolving to review his future intentions with his confessor. In both cases, Foucault concludes, a death occurs through renunciation of the self, providing us with the paradox that a "self" emerges in Western thought through the act of renouncing the self.

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<sup>45</sup> Michel Foucault, "About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth," *Political Theory* 21, no. 2 (May 1993): 202.

<sup>46</sup> As the editors remarked in an introduction to Foucault's essay "Technologies of the Self," in *Technologies of the Self*, ed. Luther Martin, Huck Gutman, and Patrick Hutton (Amherst, MA: University of Massachusetts, 1988).

<sup>47</sup> *Ibid.*, 35; Also see Foucault, "About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth," 206, for a quote from Seneca.

<sup>48</sup> Foucault, "About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth," 211; the transition from Stoic to Christian thought is handled in greater detail in Michel Foucault, *The Care of the Self*, trans. Robert Hurley, vol. 3, *The History of Sexuality* (New York: Vintage Books, 1986), 43; Christopher Gill discusses Foucault's transition (which he sees as more of a development than a break with Stoicism), Gill, *The Structured Self in Hellenistic and Roman Thought* (Oxford: Oxford University Press, 2006), 330.

<sup>49</sup> Foucault's lecture at Dartmouth entitled "Christianity and Confession" discusses *exomologesis* by name before describing a monastic practice of inner scrutiny publicly revealed—which he defers to his conclusion to name as *exagoreusis*. This talk can be found in Foucault, "About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth"; In Foucault, "Technologies of the Self," one of the lectures at the University of Vermont, he explicitly names two Christian practices, *exomologesis* and the monastic practice of *exagoreusis*.

Sergey Dolgopolsky suggests that when Foucault reads Christian writers as connecting their “thoughts and the self,” he is already assuming the Cartesian notion of a thinking subject.<sup>50</sup> Dolgopolsky, who uses Alain de Libera’s analysis of Foucault as a guide, compares this internal self to the self in Aristotle, and posits that before the early modern period, it would be more appropriate to conceive of an individual “being subjected to an action rather than being a subject of that action.”<sup>51</sup> Dolgopolsky’s charge is one that echoes other modern thinkers. Myles Burnyeat, for instance, notes that the Irish philosopher, George Berkeley, sought the roots of eighteenth century idealism in Socrates’ academy.<sup>52</sup> Likewise, Christopher Gill has challenged recent readings of Homer that are influenced by post-Cartesian models.<sup>53</sup> Common to these criticisms is the observation that the mentalities at play in the ancient world were quite different from our own. In order to extract ourselves from our own mentality, a double effort must be made. We have to learn ancient ideas of perception and knowledge, and we have to be vigilant for indications of this in texts such as Mishnah and Tosefta. But we also have to understand the philosophy that now unconsciously makes up our own understanding of our ‘self,’ and how that philosophy, particularly Kant’s and Husserl’s, greatly influenced Foucault’s project.

The question on the table now becomes what are the textual indicators in the Mishnah, especially, of thinking the problem of atonement? If we expect a liturgy (that eventually emerges), is our reading biased towards a subjectivist model? On the other hand, how do

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<sup>50</sup> Sergeĭ Borisovich Dolgopol’skiĭ, *The Open Past: Subjectivity and Remembering in the Talmud* (New York: Fordham University Press, 2013), 139.

<sup>51</sup> Dolgopol’skiĭ., 140. Dolgopolski gives the example of death. If we say ‘John died in an auto accident’ we understand that John was not the agent of his death, despite the fact that ‘John’ is the subject of the action.

<sup>52</sup> Myles Burnyeat, “Idealism and Greek Philosophy: What Descartes Saw and Berkeley Missed,” *The Philosophical Review* 91, no. 1 (January 1982): 3–40.

<sup>53</sup> Christopher Gill, *Personality in Greek Epic, Tragedy, and Philosophy: The Self in Dialogue* (Oxford: Clarendon Press, 1995).

objectivist models at play in the Hellenistic-Roman world help us read these tannaitic texts differently?

The following will first look at several ancient views of perception, beginning with some views that trace their lineage from the Socratic Academy. Next, Aristotle's description of knowledge provides us with a way to understand how the ancient world conceived perception and knowledge to form beings. Lastly, we will briefly look at ethical discussions in Stoicism with an eye to self-consciousness.

## 1. Thinking in Greek

The ‘thinking subject’ can most concisely be defined as self-consciousness, and a first-person viewpoint. From the beginning of the transcendental aesthetic in the *Critique of Pure Reason*, Kant addresses a “you, the subject” who apprehends objects through the subjective conditions of pure intuition. Pure intuition engages representations with thought to produce concepts (A50/B74).<sup>54</sup> In the transcendental deduction, this is clarified to “it must be possible for the ‘I think’ to accompany all my representations” (B131), and indeed, it is self-consciousness that generates ‘I think’ (B132).<sup>55</sup> This framework, while it resonates with aspects of Aristotle’s depiction of thinking, contains important differences. It locates the mind in a subject that a number of scholars have held is not equivalent to ancient conceptions of the soul.<sup>56</sup> Perhaps more crucially, these scholars have tried to show that the relationship between the mind and its object has undergone a complete reorientation.

Gill has developed a comparison between what he calls objective and subjective characteristics in thought. In his first book, *Personality in Greek Epic, Tragedy, and Philosophy*, he proposes that early Greek psychological models are objective and also stress the participatory nature of knowledge acquisition. He reviews instances of character thought in Greek poetry and philosophical dialogue and contrasts these examples with what he calls subjective-individualist

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<sup>54</sup> Throughout the dissertation, references to Kant’s *Critique* are from this translation: Immanuel Kant and Norman Kemp Smith, *Critique of Pure Reason* (New York: St. Martin’s Press, 1965).

<sup>55</sup> David Carr notes that the “possibility” Kant posits is an implicit self-consciousness which is made explicit when we say ‘I think.’ *The Paradox of Subjectivity: The Self in the Transcendental Tradition* (New York: Oxford University Press, 1999), 36.

<sup>56</sup> Christopher Gill attributes Myles Burnyeat for the thesis that post-Cartesian frames for subjectivity can color our reading of the ancients. He introduces Burnyeat in his 1995 book and mentions that Burnyeat’s views are the scholarly consensus in his 2006 work. There he also engages the counter-thesis made by Gail Fine. Gill, *Personality in Greek Epic*; Gill, *The Structured Self*; Burnyeat, “Idealism and Greek Philosophy: What Descartes Saw and Berkeley Missed”; Myles Burnyeat, *Explorations in Ancient and Modern Philosophy*, vol. 1, (New York: Cambridge University Press, 2012); Myles Burnyeat, M. J. Levett, and Plato, *The Theaetetus of Plato* (Indianapolis: Hackett, 1990); Gail Fine, “Subjectivity, Ancient and Modern: The Cyrenaics, Sextus, and Descartes,” in *Hellenistic and Early Modern Philosophy*, ed. Jon Miller and Brad Inwood (Cambridge: Cambridge University Press, 2003).

constructions.<sup>57</sup> In his second book, *The Structured Self in Hellenistic and Roman Thought*, he tests whether the models hold for Greco-Roman literature. These findings, and an investigation of early rabbinic literature, will be undertaken in the next section.

Plato and Aristotle, like Kant after them, begin with perception. In *Parmenides*, perceiving something includes not just the thing itself, but also the εἶδος or idea/Form of it. The young Socrates proposes to his teacher, Parmenides, that “ideas may be a thought that exists in the mind or ψυχή” (132b). Parmenides pushes him to understand in the ensuing dialogue that thinking must have an object: an idea or the Form of something, must exist outside of our mind in order to think about it. This external subjectivity appears in a more developed form in *Theaetetus*. Socrates is now the teacher, and his young pupil, Theaetetus, asserts that perception is knowledge. This statement comes from Heraclitus and Protagoras. Socrates pushes Theaetetus to see, not only what he learned from his teacher, that a perceiver is dependent upon the thing perceived, but also that the thing perceived needs a perceiver (160b). As Burnyeat reads this, mutual dependence is not based on a durative subject: the ‘subject’ is only created for that moment of connection with the ‘object.’<sup>58</sup>

Socrates says (153e) that what we call color is the result of the eye throwing toward (προσβολῆς) the appropriate motion (φορὰν).<sup>59</sup> “Something between” (ἀλλὰ μεταξύ) these two actions is the place of perception for the individual. It is exclusively the individual’s (154a). Burnyeat understands that space as “transparent,” like a window, so that, say, the white a person

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<sup>57</sup> Especially helpful are charts that compare the two conceptions in Gill, *Personality in Greek Epic, Tragedy, and Philosophy*, 11-12. Compare with Dolgopolskiĭ, *The Open Past*, 141, which has a similar list of subjective characteristics.

<sup>58</sup> Burnyeat, “Idealism and Greek Philosophy: What Descartes Saw and Berkeley Missed,” 14.

<sup>59</sup> See the mythical description of perception in *Timeaus*: “light-bearing eyes...so whenever the stream of vision is surrounded by mid-day light, it flows out like unto like...and this substance distributes the motions of every object it touches...throughout the body even unto the soul and brings about the sensation which we now term ‘seeing’.” Plato, *Tim.* 45b-d (Bury, LCL).

sees is their own private perception.<sup>60</sup> Furthermore, Burnyeat claims that perception, as an activity that is through something, is “an unspoken assumption” in this and other Antique texts.<sup>61</sup>

Plato’s *Theaetetus* separates perception from judgment. When the Dialogue begins, Theaetetus quotes Protagoras’ theory that “perception is knowledge.” By considering judgment to be a separate process which takes place in a unifying mind (νοῦς), the theory of perception can be seen as object-centered. Christopher Gill calls this an objective-realist view, since it is focused on the real world. In addition, the dialectic displayed in Plato’s dialogues is participatory on several levels. He notes that on an intra-personal level, reasoning occurs by way of a tri-part ψυχή, where desire is controlled by reason and spirit.<sup>62</sup> On an inter-personal level, characters validate, ground or correct “conventional thinking about shared, communal values.”<sup>63</sup> The importance of corroborated evidence is found in Sextus Empiricus’ philosophy of perception.

Sextus presents a model of perception in a description of the Cyrenaic school, which also came out of Socrates’ Academy. Sextus reports that it is customary (νενομισται) to believe that the phenomena (appearances of colors, for instance) do not give experience. Rather, the object produces experience (παθος), which is what appears to us, and is true for us. However, if we say that the object is the phenomenon (what appears to us), and that that is the true thing, then, if our perception is only true for us, the object itself is only true for us. In other words, in this second scenario, there cannot be something common to everyone, available to each experience (*Against the Logicians* I.193-5). Here, as in *Theaetetus*, the philosophy is that there is “something

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<sup>60</sup> Burnyeat, *Explorations in Ancient and Modern Philosophy*, 292.

<sup>61</sup> Burnyeat., 286.

<sup>62</sup> Gill, *Personality in Greek Epic, Tragedy, and Philosophy*, 245.

<sup>63</sup> Gill., 239.

between” the perceiver and the perceived, something that produces experience (τα ποιητικά των παθός).

Burnyeat notes that this way of understanding perception is customary, *νενομισται*,<sup>64</sup> but is this common to the Sextus’ second century of common era, or is he reporting the milieu of the Cyreniads, in the fourth century, before the common era? Gail Fine concludes that Sextus’ presentation indicates that the Cyrenaics’ views are also his own.<sup>65</sup> This clearly objectivist view extant at the time of the tannaitic rabbis can be contrasted with Stoic thought, as will be seen below. However, before turning to these, it is important to consider the next step from perception, knowledge. As noted, Plato’s *Theaetetus* separates perception from knowledge. Knowledge is reserved for Plato’s discussion of Form, *eidos*, which is not presented as a discrete theory, but is found in a number of dialogues, particularly the *Sophist*.<sup>66</sup> Aristotle’s theory of thinking contrasts with the Platonic accounts of a unifying *nous*.

There are three concepts that are primary to Aristotle’s discussion of knowledge: *dunamis* (δυναμις), *energeia* (ενεργεια), and *entelecheia* (εντελεχεια). *Dunamis* can be translated as potential, ability or faculty. For instance, in Aristotle’s *de Anima* II.4 (417a-b), Aristotle describes several stages of knowledge. The first is that of potential (*dunamis*), when a person, say, has the capacity to learn French but needs an instructor. In the second stage, the student has learned French, but does not use it. The transition from stage one to two alters the person: her potential has been actualized. However, since she doesn’t use her new language, French remains a potential. This is a new (and different) potentiality from the first stage. The

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<sup>64</sup> Burnyeat, Levett, and Plato, *The Theaetetus of Plato*, 290.

<sup>65</sup> Fine, “Subjectivity, Ancient and Modern: The Cyrenaics, Sextus, and Descartes,” 207.

<sup>66</sup> See David Sedley’s presentation of this in “Three Platonist Interpretations of the *Theaetetus*,” in Christopher Gill and Mary Margaret McCabe, eds., *Form and Argument in Late Plato* (Oxford: Oxford University Press, 1996), 89-93.

third stage is when the person acts or practices (*Energeia*) the French she has learned. No alternation takes place in this transition, as the latent potential has now become an actuality (*entelecheia*). *Entelecheia*, however, is the complete and absolute state of *energeia*.<sup>67</sup> For instance, in *Metaphysics* 8.9, *entelecheia* is used to describe a “primary being,” using the example of a number. Numbers are divisible, but when a number such as six is broken down into three twos, it is no longer six: to retain ‘six’ one has to understand it in its ‘six-ness’ or *entelecheia*. ‘*Telos*’ or ‘end’ comprises part of this concept. Thus, perceiving or remembering or ‘living the life of a bear’ are to be contrasted with processes that are directed towards something outside of the process.

*Energeia* can be described as “existence in action.”<sup>68</sup> In *de Anima* II.4 (DA 416b20), a soul (the form of a living thing) *energeia* through eating food: the action of eating enables its existence. In *de Anima* III.4 (429a24), the mind has no *energeia* until it thinks: the action of thinking enables its existence. The mind is *dunamis* (potential, faculty), until it thinks. Aristotle explains that the mind is in the soul. As Kathleen Wilkes says, the soul is “the aspect that tells us ‘what it is to be’ this organism.”<sup>69</sup> So when Aristotle informs us (429a29-30) that the capacity to think is in the soul, he is not speaking of the body and its organs, he is speaking of the *dunamis*/potential in ‘what it is to be’ a living thing. The mind has the potential to think, and the act of thinking, can be latent or actualized.

Perception is parallel to thinking, however it has an organ (DA 429a26-7): our perception is activated by the objects of perception (DA 431a4). We smell a rose or hear a voice because

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<sup>67</sup> See the entry for ενεργεια in Henry George Liddell and Robert Scott, *A Greek-English Lexicon*, (Oxford,: The Clarendon Press, 1929), 478. “Ενεργεια is often not distinguishable from εντελεχεια but that Aristotle does distinguish between them is plain from Physics 3.3 and Metaphysics 8.3 and 8.9. ”

<sup>68</sup> Liddell and Scott.

<sup>69</sup> Kathleen V. Wilkes, *Real People : Personal Identity without Thought Experiments* (Oxford: Clarendon Press, 1988), 211; See also Shadi Bartsch, *The Mirror of the Self: Sexuality, Self-Knowledge, and the Gaze in the Early Roman Empire* (Chicago: University of Chicago Press, 2006), 52.

the scent or sound reaches the nose or ear. These sense perceptions are conveyed to the mind via *phantasmatos* or representation (DA 431a17). Several points are to be noted here. The orientation of both perception and thought is objective, it is the object that acts on the organ, and it is the organ that acts on the thinking soul. If the soul, which defines what it is to be this organism, only thinks when sensations are given to it, then inner ‘beingness’ is activated through external contacts. An activated mind is identical with its object: or, thinking ‘about’ something is to fully engaged with its object (DA 431b18). The soul is the place where this engagement occurs, and Aristotle likens it to a hand that employs (*οργαζον*) instruments.

## **2. Thinking in the Greco-Roman World**

It is estimated that the compilation of the Mishnah dates from the third century of the common era, which makes the collation of sayings contemporaneous with Sextus Empiricus, and the Sages it witnesses living in a Greco-Roman milieu. This milieu, of course, consisted of many other schools. Stoicism, in particular, has been cited as presenting a mentality distinct from the Platonic and Aristilean models noted above.

Anthony Long notes that the Stoics’ understanding of *phantasia*, or representation “encompasses the entire life of the mind,” and that this indicates “a new focus on consciousness, on the individuality of the perceiving subject.”<sup>70</sup> Interestingly, he cites Aetius of Antioch for the definition “a representation is an affection (*pathos*) in the soul, which reveals itself and its cause” (Aetius IV.12.1). While this would seem similar to Sextus, Stoic philosophers developed the idea of assenting (*synkatathesis*) to these revealed representations. This potential to judge, Long believes, brings Stoic thought to “first person perspective.”<sup>71</sup> One Stoic that Long cites, Epictetus (50-135 CE), Christopher Gill interprets differently.

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<sup>70</sup> A. A. Long, *Stoic Studies*, Hellenistic Culture and Society (Berkeley: University of California Press, 2001), 266.

<sup>71</sup> Long., 274.

Long tells us that Epictetus introduces the faculty of *prohairesis*, moral character, which enables a person to judge the truth of representations. Furthermore, it is this faculty that bears “our personal identity.”<sup>72</sup> Gill charges that Long fails to mention that Epictetus also discusses what “falls outside of our *prohairesis*.”<sup>73</sup> Gill holds that Epictetus presents a three-point program: the first two steps are what falls inside and outside our *prohairesis* (being in accordance with this faculty leads to peace of mind, whereas following desires generates passion), while the third is an “ethical holism.”<sup>74</sup> The second stage entails a rejection of desires, and the recognition that the only “unqualified desire” is a desire for the good. While Epictetus says that these steps are up to us—in line with Long’s reading of a ‘self’—Gill asks a further question of the context, namely, if this training is to be conducted within Epictetus’ school or on one’s own. Probing the text further, Gill finds that the second stage, in fact, links impulses towards good to the desire to benefit others. Gill concludes that Epictetus correlates the personal and the social.<sup>75</sup> He emphatically states that the three-point program is objectivist and participatory: the person develops “through engagement in a critical dialogue with the belief-set of her social context, in a way that may be supplemented by the modes of (practically directed) philosophical discourse deployed by Epictetus and other Stoic teachers.”<sup>76</sup> That Gill finds Epictetus’ program to be in line with Stoicism in general suggests that the broader culture within which the Tannaitic rabbis lived and thought related to problems in much the same way.

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<sup>72</sup> Long., 275

<sup>73</sup> Gill, *The Structured Self in Hellenistic and Roman Thought*, 381.

<sup>74</sup> Gill.

<sup>75</sup> Gill., 383-5.

<sup>76</sup> Gill., 389.

This review of ancient conceptions of thinking provides us with a different set of criteria for reading rabbinic texts. If we continue to ask why the tannaim did not compose a liturgy for Yom Kippur after the destruction of the Temple, then we have to look at what sort of document we have in the Mishnah on Yom Kippur. Was it, in fact, the documentation of a communal thought process? An objectivist approach to thinking about how atonement could be accomplished in this new reality would be to ‘create’ an appearance of the functioning Temple on that day, with the resulting representation corrected by the group. Mishnah Yoma represents multiple layers of this process. The next section will begin with issues recent scholars have raised before proposing a different way to view its dynamics.

### **C. What Kind of Thinking Does Mishnah Yoma Display?**

This dissertation will examine Yoma’s thinking through two lens, ritual theory and linguistic philosophy. Yoma is a text that describes rituals. The context of culture determined the nature of the rituals through many generations. As a ritual is manifested through the texts, a culture is manifested through its situations. The text in its situation allows us to construe the import of the ritual and by using the ritual to interpret text, it is possible to construe the culture.<sup>77</sup> The first chapter traces generational ideas about moral transgressions’ effects on communities, and what actions might ameliorate these effects. The purification, or *חטאת* ritual, is a product of this thought. Second Temple texts shift the place of the *חטאת* in relation to the burnt offering, or *עולה*. Authorial positioning of the two sacrifices, both in their respective relationships, and also, the rites added to the core Leviticus text, represents thinking that utilizes a sophisticated

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<sup>77</sup> This is a paraphrase of Halliday’s understanding of codes. As will be seen in the following, some linguists have used code theory to create models of rituals. M. A. K. Halliday, *An Introduction to Functional Grammar* (London: E. Arnold, 1994), xxxi.

signaling through context. Mishnah Yoma's amplification of some non-sacrificial rituals, textually placed next to sacrificial elements, suggests a text reflective of communal thinking.

## 1. Ritual Theory

The representation of something is called a sign. Charles Sanders Peirce was one of the first modern thinkers to create a philosophical doctrine of signs, called semiotics, beginning in 1897. He stated that the syntax of every language has “logical icons” that are aided by conventional rules.<sup>78</sup> Signs are determined by their objects<sup>79</sup> (and for that reason, they are not completely arbitrary). Along with linguistic examples, he expanded the notion of sign by using examples such as clothing and physical stances, noting how they indicate a person’s occupation to the observer. The linguist Ferdinand de Saussure, lecturing in roughly the same years, linked the idea of something (concept) to the word that represents it (sign). Thus, he asserted that the sign is arbitrary, since various words can express the same idea.<sup>80</sup> Saussure also used the word “symbol” to speak of signs, but unlike later structuralists, he found it awkward.<sup>81</sup> The value or meaning of signs comes about through contrast with other signs, which can be expressed associatively (and which Jakobson later called paradigmatic) and syntagmatically. While Saussure spoke of groups of words with associative meanings,<sup>82</sup> later theorists would refer to categories of paradigmatic relations. The sign’s position within a sequence, its syntagmatic relationships, Saussure proposed could be shown through the example of chess, where the value of a piece is related to its position on the board, but also the rules of the game.<sup>83</sup>

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<sup>78</sup> Charles Sanders Peirce, “Logic as Semiotic: The Theory of Signs,” in *Philosophical Writings of Peirce*, ed. Justus Buchler (New York: Dover Publications, 1955), 106.

<sup>79</sup> In a 1908 letter to Lady Welby. Charles S. Peirce, *The Essential Peirce: Selected Philosophical Writings*, ed. Nathan Houser and Christian J. W. Kloesel, vol. 2 (Bloomington: Indiana University Press, 1992), 478.

<sup>80</sup> Benveniste challenged this view. He notes that it is the signification (“the *motivation* of the designation”—his italics) that is arbitrary, not the sign itself. Emile Benveniste, *Problems in General Linguistics*, trans. Mary Meek (Coral Gables, FL: University of Miami Press, 1971), 47.

<sup>81</sup> Ferdinand de Saussure et al., *Course in General Linguistics* (LaSalle, Ill: Open Court, 1986), 68.

<sup>82</sup> Saussure et al, 123-5.

<sup>83</sup> Saussure et al., 88.

Claude Lévi-Strauss, heavily influenced by Saussure, but also Peirce, was one of the first to bring these linguistic principles into social contexts, where the relationships between individuals are constrained by the rules of a society in order to effect certain outcomes. Lévi-Strauss gave a syntagmatic description of how language and culture can be compared via his field observations:

Marriage regulations and kinship systems [are] a kind of language, a set of processes permitting the establishment, between individuals and groups, of a certain type of communication. That the mediating factor, in this case, should be the *women of the group*, who are *circulated* between clans, lineages, or families, in place of the *words of the group*, which are *circulated* between individuals, does not all change the fact that the essential aspect of the phenomenon is identical in both cases. [italics his]<sup>84</sup>

Women, in his observation of this patriarchal society, hold a sign-value, since it is the men who are given a place in the social organization based on their ties to particular women (i.e. they can become “brothers” because of a marriage, when being a brother carries certain privileges). The operational value of women in this society means that male status is determined situationally.

Dan Sperber notes that Lévi-Strauss’ semiotic model does not explain an underlying code, and, in fact, he questions whether the medium of ritual, say, can be explained by codes.<sup>85</sup> At its most basic level, a code is a system of rules that converts thought into some form of communication. Language is a code and there has been a theoretical turn, following Lévi-Strauss, but refining him, towards describing ritual movement as a sort of language. In Sperber’s earlier book, *Rethinking Symbolism*, he cautiously approves Victor Turner’s delineation of three levels or fields of meaning.<sup>86</sup> Seth Kunin creates a cognitive version of Turner’s anthropological

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<sup>84</sup> Claude Lévi-Strauss, *Structural Anthropology*, trans. Claire Jacobson and Brooke Grundfest Schoepf (New York: Basic Books, 1963), 61. Lévi-Strauss had presented the data and come to this conclusion as early as 1949, in the French edition of *The Elementary Structures of Kinship*, ed. Rodney Needham, trans. James Harle Bell and John Richard von Sturmer (Boston: Beacon Press, 1969), 492-7.

<sup>85</sup> Sperber and Wilson, *Relevance*, 8.

<sup>86</sup> Dan Sperber, *Rethinking Symbolism*, trans. Alice Morton (Cambridge: Cambridge University Press, 1975), 13. Victor W. Turner, *The Forest of Symbols* (Ithaca, N.Y.: Cornell University Press, 1967), 50; For an expanded account of these levels, see Victor W. Turner, “Forms of Symbolic Action: Introduction,” in *Forms of Symbolic*

model which goes some way towards organizing phonemes (or ritemes) as codes that act as signals. While Sperber argues for how decoding takes place, Kunin's focus is with the processes that emphasize and de-emphasize elements of narrative and ritual, towards uncovering "the meaning articulated by the pattern."<sup>87</sup>

Turner's first level, exegetical meaning, Kunin describes as the "biological aspect of underlying structure."<sup>88</sup> Linking the brain's organization of meaning to human expression, this level utilizes Noam Chomsky's insight that there is "a mental reality underlying actual behavior."<sup>89</sup> The "idea," close to Plato's *eidos*, comes out of the possibility of Kunin's S<sup>1</sup> level, and is unconsciously shaped by culture into a category. Level S<sup>2</sup> describes the operative forces within the S<sup>1</sup> level, or the rule. Recalling Saussure's chess example, pieces are rule-bound to only move in particular ways. Kunin expands Turner's cultural meaning of "operation" in S<sup>2</sup> by recognizing the conceptual level behind Turner's observations that symbols are related to social questions such as status. Finally, Kunin's Level S<sup>3</sup> is the use of these rules: for instance, there are many ways to deploy the rook, as its place on the board is configured by other pieces. Likewise, rule-structured components of rituals, ritemes, can be paired with other rule-structured ritemes, as called for within the culture. Lévi-Strauss' description of women as a circulating sign, fits Kunin's S<sup>3</sup>, as a mytheme in relation to other mythemes.

In some respects, Kunin's methodology bridges the generative grammar of Chomsky and his school, which can be characterized as syntagmatic (relationships that determine a chain), and the paradigmatic interests of theorists like Turner (concerned with the formations of categories).

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Action: *Proceedings of the 1969 Annual Spring Meeting of the American Ethnological Society*, ed. Robert Spencer (Seattle: University of Washington Press, 1969), 6..

<sup>87</sup> Seth Daniel Kunin, *We Think What We Eat: Neo-Structuralist Analysis of Israelite Food Rules and Other Cultural and Textual Practices* (New York: T & T Clark International, 2004), 7.

<sup>88</sup> Kunin, 10.

<sup>89</sup> Noam Chomsky, *Aspects of the Theory of Syntax* (Cambridge, MA: The MIT Press, 1965), 4.

Chomsky proposes that an English speaker is able to establish the syntax of a nonsense group of words through the knowledge of how English forms plurals, verbs, and adverbs. Thus, “Pirot karulize etalically” can be recognized as a plural noun that is followed by a verb that is probably made or rendered in some fashion.<sup>90</sup> The -ly word is an adverb that would describe that process. Rituals have a different set of identifiers. Sacrifices can utilize materials such as animals or food items and are manipulated by slaughter, burning, etc. Roy Gane, although directly dependent upon Frits Staal’s syntactic models, acknowledges the similarity to Chomsky’s graphs.<sup>91</sup> Gane proposes three perspectives: intrinsic activity, cognitive task, and ritual syntax.<sup>92</sup> Like Kunin (and Chomsky), Gane’s goal is to depict patterns without overt attention to articulated meanings, which Gane claims are “secondary and extrinsic.”<sup>93</sup>

Gane use of syntagmatic linguistics first establishes a core unit and then positions that unit along a sequence of units. Thus, if a priest immerses (A) before and after a bull is offered (B), Gane might chart this as B→ABA. The structure can take on complexity when particular actions occur for, say, the bull offering (collecting the blood, sprinkling it in specific locations, etc.). Gane characterizes sacrifices as transactional, where the ownership of something (animal, cereal, etc.) is transferred from human to divine. This occurs through a breakdown from a whole to something that is: dead (animal), poured (blood, wine), or burnt (food, animal). The steps that chronicle the breakdown comprise the intrinsic activity perspective. Using an animal sacrifice as a model, Gane proposes a hierarchy, where what happens to the body can be subdivided into specific treatments of “object units” such as the dismemberment of the carcass on one level,

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<sup>90</sup> Noam Chomsky, *Syntactic Structures* (The Hague: Mouton, 1985), 104.

<sup>91</sup> Gane, 2; Kunin, *We Think What We Eat*, 7.

<sup>92</sup> See Gane’s “Introduction” for both an overview of the methodology and his intellectual lineage. Gane, it should be noted, published his dissertation in 2014, but the publication, he notes is a “lightly edited” version of the manuscript approved in 1992. Roy Gane, *Ritual Dynamic Structure* (Piscataway, NJ: Gorgias Press, 2014), 1-11; 97. Frits Staal, *Rules without Meaning: Ritual, Mantras, and the Human Sciences* (New York: P. Lang, 1990).

<sup>93</sup> Gane, 2; Kunin, *We Think What We Eat*, 7.

followed by specifics for suet, on the one hand, and entrails, on the other, as sections on a secondary level.<sup>94</sup> The rituals specify that these actions require certain other actions: slaying an animal entails laying hands on its head; manipulating its blood entails collecting it and preventing its coagulation; burning body components entails the laying of a fire and stoking it, etc.

Certain of these requirements, such laying hands on the head, are not necessary to the intrinsic level, instead they carry out a cognitive task transformation. Gane says that the cognitive task is “superimposed on the intrinsic activity.”<sup>95</sup> While he is careful to define the ritual without reference to meaning, he notes that the text supplies a meaning. In the case of the burnt offering, it is a food gift to YHWH (cf. Lev 1:13), but in the case of purification sacrifice, the ritual acts to remove something intangible (cf. Lev 4:13-21).<sup>96</sup> Gane states:

Thus the burnt offering is regarded as accomplishing a *transaction* between two parties: the offerer and YHWH. A transaction involves “intrinsic activity” in the material domain, but this serves as a “vehicle” for an attached meaning that concerns transfer of an ownership relationship with respect to an item of value. While the “activity vehicle” takes place in the material world, transfer of the relationship itself cannot take place in the material world because the relationship is nonmaterial. Intangibles like this can be perceived and dealt with on the cognitive level, but it is impossible to interact with them in “intrinsic activity.”<sup>97</sup>

Cognitive tasks, in Gane’s system, can only be carried out through intrinsic actions. Despite obvious parallels to generative grammar, he proposes that rituals are not language communication: language represents or refers, whereas ritual interacts on the cognitive level.<sup>98</sup> It should be noted that he distinguishes his work from E. Thomas Lawson and Robert McCauley, who also use cognition theories to map rituals, saying that while theirs is from the fields of

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<sup>94</sup> Gane, *Ritual Dynamic Structure*, 21-2.

<sup>95</sup> Gane, 53.

<sup>96</sup> Gane follows Milgrom. See Jacob Milgrom, *Leviticus 1-16* (AB 3; New York: Doubleday, 1991), 254-58.

<sup>97</sup> Italics his. Gane, 52-3.

<sup>98</sup> Gane, 92.

“linguistics and other cognitive sciences,” his is “adopted from general systems theory.”<sup>99</sup>

Naphtali Meshel, who has constructed a grammar out of the Priestly corpus, also concludes that while ritual systems are rule based and are “generative, rigorous, amenable to concise formulation, partially unconsciously internalized, and have some relation to meaning,” the operative categories differ between ritual and natural languages.<sup>100</sup> He has created categories that stand in for language categories, which he calls zoemics, hierarchy, jugation, and praxemics. In the zoemic category, age and sex act like a plural suffix added to the English noun in Chomsky’s example: a person “conversant” in Priestly ritual can begin to narrow down what sacrifice is meant when they see a male, mature ram. Likewise, that person would know that yearling, unblemished, male sheep have a subordinate offering (a jugation) of flour mixed with oil. While Chomsky speaks of rules that generate certain structures, Meshel speaks of sacrifices such as the burnt offering that generates a certain group of animals, or locations such as altars that require certain ways that blood is applied (e.g. “daub” versus “flick”).<sup>101</sup>

While Gane describes intrinsic activity as a vehicle for cognitive tasks, Meshel looks for the function, and then lists the actions subordinate to that function. Thus Gane’s delineation of subordinate activities as separate hierarchies are considered a bounded ‘phrase’ by Meshel. Meshel’s delineation of the role of praxemics closely resembles Kunin’s S<sup>2</sup> level. Whereas Kunin proposes a level of instruction (he uses the example of inputting instructions into a

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<sup>99</sup> For comparison, see Lawson and McCauley. Their work was published after Gane’s 1992 dissertation. Their critique of Staal, one of Gane’s dissertation committee members, is worth reviewing. Gane, 5; E. Thomas Lawson and Robert N. McCauley, *Rethinking Religion: Connecting Cognition and Culture* (Cambridge: Cambridge University Press, 1996), 56-9.

<sup>100</sup> Naphtali S. Meshel, *The “Grammar” of Sacrifice: A Generativist Study of the Israelite Sacrificial System in the Priestly Writings, with A “Grammar” of  $\Sigma$*  (New York: Oxford University Press, 2014), 207.

<sup>101</sup> Rules, such as how a declarative sentence can be turned into a passive, generate grammatical sentences. See §5.4 in Chomsky, *Syntactic Structures*, 42-43; Meshel’s appends a “grammar” that evaluates grammatical and ungrammatical sacrificial expressions. See Meshel, *The “Grammar” of Sacrifice*, 1-26.

computer via the program), Meshel says that generativity occurs through “the interface of the ‘agent,’ ‘object,’ and ‘target’ components” of the sacrifices in P.<sup>102</sup>

Meshel is cautious in his use of the term grammar. He suggests that:

ritual and language are isomorphic only inasmuch as both are based on a finite set of generative rules, in part unconsciously internalized, that are amenable to concise, formulaic notation, such that illicit combinations are immediately discernible.<sup>103</sup>

More recently, he has refined this definition by explaining his structures as mapping unconsciously internalized generative rules. He coins the acronym GRAMMUR--generative, rigorously applied, mathematically modelled, unconscious rules—as a more accurate descriptive of his project. This syntactic approach provides insights that can be used in conjunction with another branch of semiotics, pragmatics.

## **2. Philosophy of Language**

Frits Staal brought Saussure’s claim of the arbitrariness of signs into ritual theory: his 1990 assertion that rituals have no meaning set in motion discussions that continue through the present day. Gane and Meshel both cite Staal and both challenge him. Gane through cognitive strategies, and Meshel through the tasks of the rite. In particular, Meshel notes that when communities shift hierarchies in their telling of a particular ritual, an interpretation is revealed. His analysis of how the עולה can also be constitutive of another sacrificial type, such as a חטאת, goes towards a proof of semantic content. Thus, a sacrifice that is elsewhere considered as its own entity can take its place as a subordinate to a particular task.<sup>104</sup> As Meshel notes, the term ‘praxeme’ was first coined by Catherine Bateson and should be distinguished from the semiotic

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<sup>102</sup> Kunin, *We Think What We Eat*, 8; Meshel, “*Grammar*” of Sacrifice, 163.

<sup>103</sup> Meshel, 19.

<sup>104</sup> Naphtali S. Meshel, “To Be Taken with a Grain of Salt: Between a ‘Grammar’ and a GRAMMUR of a Sacrificial Ritual System,” in *Language and Religion*, ed. Robert Yelle, Christopher Lehrich, and Courtney Handman (Berlin: De Gruyter, 2019), 31–56.

branch of linguistics called ‘pragmatics’. In this same source, an article by the anthropologist Stanley Tambiah, Tambiah cautions against prioritizing functional pragmatics over what he calls semiotics, but more correctly should have been termed syntactics.<sup>105</sup> However, in this section pragmatics will take center stage, in order to understand the theory that Chapter Three will utilize. It is my contention that the syntactical work in Chapter Two, along with the pragmatic approaches in Chapter Three, can contribute to an inquiry that seeks to uncover generational thought.

Within the theoretical framework of semiotic linguistics, grammar is a syntactical inquiry. The two other branches of semiotics, semantics and pragmatics, take on the question of meaning. Semantics, can be described as “the relation of signs to the objects to which the signs are applicable,” while pragmatics is “the relation of signs to interpreters.”<sup>106</sup> The field of pragmatics attempts to explain how an utterance encodes contextual meaning into what is explicitly stated in such a way that it is implicit for the intended audience. This inquiry fits well within a study of ritual. Equally important, pragmatics also raises the question of how social practices can count as linguistic ones, extending the early work of Pierce, and others, such as Roland Barthes.

Meshel notes that comparative syntactical mapping of a ritual across several communities can reveal shifts that reveal theological positions. In linguistics, this is called a ‘semantic shift’ and can be illustrated by the word “awesome” which is almost the polar opposite to “awful,” yet the two words were once synonyms meaning “inspiring awe.” For Meshel, a similar example occurs with the word for libations, נסכים, which in the Priestly literature only refers to liquids,

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<sup>105</sup> Meshel, 130.

<sup>106</sup> Levinson uses Charles Morris’s early structure of the field and cites his definitions. Stephen Levinson, *Pragmatics* (Cambridge: Cambridge University Press, 1983), 1.

yet by the Rabbinic period, means both oil and flour. Another semantic move comes from including parts of one sacrifice, the *חטאת* fat, as part of an *עולה* sacrifice. Meshel characterizes this as a shift in hierarchy because the *חטאת* sacrifice, understood as producing its own effect of purification, becomes a component of the task of producing a pleasing odor, the goal of the *עולה*.<sup>107</sup> We will see this at work in chapter two.

The grammatical rules Meshel uncovers lays a strong foundation for the kinds of questions the field of pragmatic linguistics asks. Further, Meshel notes approvingly that Dan Sperber's work "alone approaches a systematic analysis of the problem of meaning in ritual."<sup>108</sup> Sperber's work on relevance, which goes beyond *Rethinking Symbolism*, the work Meshel cites, asks the conditions by which it is possible for a speaker's meaning to be communicated. He begins with Paul Grice's cooperative principle—"make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged"—but continues with the nine maxims Grice develops from it:

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<sup>107</sup> Meshel, "*Grammar*" of *Sacrifice*, 192.

<sup>108</sup> Sperber, as Meshel notes, claims that rituals are symbolic systems, and as such, do not signify. Yet, as I've pointed above, with the coincidence between Turner and Sperber, and as Meshel points out, citing Sperber's use of Saussure, Sperber makes valuable contributions. Meshel, "*Grammar*" of *Sacrifice*, 178, n. 14.

### *Maxims of Quantity*

- Make your contribution as informative as is required (for the current purposes of the exchange)
- Do not make your contribution more informative than is required

### *Maxims of Quality*

*Supermaxim:* Try to make your contribution one that is true

- Do not say what you believe to be false
- Do not say that for which you lack adequate evidence

### *Maxim of Relation*

- Be relevant

### *Maxims of Manner*

*Supermaxim:* Be perspicuous

- Avoid obscurity of expression
- Avoid ambiguity
- Be brief (avoid unnecessary prolixity)
- Be orderly<sup>109</sup>

If the hearer assumes the speaker conforms to these parameters, then seemingly ambiguous statements can be correctly decoded. A statement like “it is raining,” does not tell us where it is raining, when this was uttered, or what the speaker intended for the hearer to glean from the information. While the statement can be amended so that we know it is now April 3, 1942 in New York, non-linguistic information (such as the relevance of the information to the situation of the hearer) is the only path to disambiguity. Sperber’s investigations into how a hearer can determine non-linguistic inferences to interpret ambiguous statements are useful guides for analyzing the textual interpretations of Second Temple and Rabbinic ritual commentators.

In the following I will use the above statement as a way to unpack Sperber’s points. Let’s imagine a situation where Dave is heading out the door and Shayna tells Dave that it is

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<sup>109</sup> Sperber and Wilson, *Relevance*, 33-4.

raining. Dave grabs his umbrella and leaves. Shayna knows Dave knows something about the weather of the day, and its possibilities. Dave immediately recognizes its relevance to his intention of taking a walk, even though a particular course of action was only implicitly conveyed. Sperber notes that Grice identified such uses of the cooperative principle as “implicatures,” but he also charges that on that principle alone, other interpretations of the speaker are possible—which the theory does not account for. For instance, Shayna, above, could well have wanted Dave to go out, but Dave, hearing only the state of things, decided to stay at home. What prevents him, in the first scenario, is his assumption that Shayna was trying to facilitate his walk, a possibility that Sperber suggests comes from a shared cognitive environment that is relevance orientated.<sup>110</sup>

Shayna’s comment, in Sperber’s theory, is *ostensive*:<sup>111</sup> it assumes Dave has sufficient understanding of this type of weather’s requirements to stay dry, in order to take the appropriate action. Shayna makes that assumption manifest in her declaration. Shayna also expresses *mood*, a linguistically coded feature of oral language.<sup>112</sup> This, along with the words, helps Dave interpret Shayna as intending to direct him to protect himself from the rain. Shayna’s intonation can help him decipher whether she intends the information to stop him from leaving or help him go comfortably. Sperber also considers belief. For Dave to act, Shayna must convey that she *believes* it actually is raining.<sup>113</sup> For her to achieve relevance (to get him going on his errand, safely), it has to be manifest to her that he wants to go, and that the information will not stop him cold. Sperber explains that Grice would be satisfied to recover the propositional form “it is

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<sup>110</sup> Sperber and Wilson, 46.

<sup>111</sup> The italics in this paragraph indicate concepts important to a determination of relevance.

<sup>112</sup> Grice discusses the indicative and imperative moods, as well as what he calls a “dummy mood” defined as sentences of the form “X means that...” H. Paul Grice, “Utterer’s Meaning, Sentence-Meaning, and Word Meaning,” *Foundations of Language* 4 (1968): 226.

<sup>113</sup> Grice modifies his 1957 “Meaning” article in 1968. Belief in the updated version is when the “hearer should *think that the utter believes* something.” (Italics his). Grice, 230.

raining” and the mood of the utterance. Any other assumptions in his system are “implicatures.” Sperber, however, posits that assumptions of a proposition such as “it is raining” are explicit if and only if they are logical forms of the utterance. On his reading, the response of taking an umbrella is a “pragmatically determined aspect of explicit content.”

Sperber’s use of Grice’s criteria of “relevance” of course plays into how Dave understands Shayna’s comment. He would correctly interpret Shayna to mean to stay at home if he had been in the process of going out to play tennis, for instance. He would also know that she did not intend to prevent his leaving if the original errand was in response to something urgent, such as a need for more baby formula. Sperber’s reliance on a logical extension only gets us so far. In the example of a tennis date, is Dave correct to interpret that Shayna means for him to stay home, or to go to the indoor court at his club? One philosopher who considers the process of deliberation is Larry Wright. Wright proposes that reasoning is by way of “a tacit grasp of a particular question” that what he calls the “support” of a “conclusion.”<sup>114</sup> Forming the question, or more properly, what is ‘in question’, also shapes what conclusions can be supported.

One of Wright’s examples is the situation where his car stops. He can conclude that it ran out of gas or, perhaps, the more complicated situation of an impurity in the last gas he bought, which is preventing the mechanical function of the car. Implicit in the situation of the stopped car is the question “why?” and a conclusion that is readily drawn is “I’m out of gas,” with supports such as the fuel gauge on empty and that he can’t recall buying any recently. The answer, “out of gas” must reject other possibilities, however, so the process must be expanded to consider what other conclusions (such as a plugged filter) would yield the same situation. The rival conclusions provide the opportunity to contrast the reasonings behind them (does adding

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<sup>114</sup> Larry Wright, “Argument and Deliberation: A Plea for Understanding,” *The Journal of Philosophy* 92, no. 11 (1995): 571.

more fuel re-start the car?). The implicit question is thus determined by the evidence that supports the conclusion. If fuel doesn't re-start the car, a different conclusion must be entertained, leading to a refinement of the question (what blocks fuel from getting to the motor?). Implicit in a skilled mechanic's approach to the car might be a question regarding the filter, and its dark appearance, which strengthens the rival conclusion that the car's stoppage is not due to an empty tank, but the need for a new filter. The consideration of rival conclusions is the point at which thinking occurs. Thinking reshapes the implicit question, particularly in more complex scenarios than the problem of the car breakdown. Relevance, in Wright's system, is articulated through supporting evidence. In the problem of this dissertation, discovering Biblical and Second Temple discourse layers can help refine the basic question "why a narrative of the High Priest?" to one that is more nuanced. Wright suggests that the supportive claims ultimately determine the implicit question.

Texts from Leviticus to Mishnah Yoma are all narratives of purported rituals. Leviticus and Numbers are in the genre of instructions for performance, while the Second Temple and Tannaitic literature lean towards story telling. But even as story, the narrativity of the accounts take on an element of performance. In the Mishnah and Tosefta, the disputes over correct practice underline that, even in a setting where the ritual cannot be performed, the text is about how to perform it. Robert Brandom asks what the sufficient conditions are for a system of social practice to count as linguistic practice?<sup>115</sup> His query goes to the heart of how post-exilic writers think ritual in order to address problems.

To 'think ritual' is the utilization of explicit practices to identify implicit norms that underlie these practices. As Sperber and Wright note, the recipient of a speech act makes

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<sup>115</sup> Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, MA: Harvard University Press, 2001), 7.

determinations when listening or solving a problem. Brandom expands the scope of these considerations to include physical acts done with patterns of regularity. He claims the status of propositions for these acts, which allows them to be assessed for their rule content. Distinct from behavior that cannot be defended by reason, the actions Brandom considers intentionally alter their world.<sup>116</sup> Brandom utilizes Kant, Wittgenstein, and Sellars to build a theory that has significant explanatory power for the rabbis' work.

Brandom begins with Kant's idea that rules specify how something ought to be done and is therefore subject to evaluation according to these rules.<sup>117</sup> "Ought" is a specialized word that is used by Kant in his explication of assessments which go towards forming judgments. A brief look at how Kant brings his reader to this point, however, is important in laying bare the difference between his approach and the ancient world's descriptions of thinking.

Kant, as did Plato, begins with the object. Similar to what we saw above in *Parmenides*, where an external subjectivity is necessary in order for someone to think about it, Kant understands that objects affect the mind to produce sensations. However, unlike what Socrates explains to Theaetetus, that there is mutual dependence between subject and object, Kant focuses on how sensations are processed "into singular representations of items in space and time, intuitions."<sup>118</sup> While both Plato and Kant describe a unifying mind that produces judgments, in Plato and the ancients, perception occurs between observer and phenomena, whereas Kant locates perception and thinking within the subject.

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<sup>116</sup> Brandom, 8.

<sup>117</sup> Brandom.

<sup>118</sup> This brief overview of Kant is dependent upon Jay Rosenberg's presentation. Jay F. Rosenberg, *Accessing Kant: A Relaxed Introduction to the Critique of Pure Reason* (Oxford : New York: Clarendon Press ; Oxford University Press, 2005, 63.

Kant's Transcendental Aesthetic, the first section of the *Critique of Pure Reasoning*, is concerned with cognition via intuition (*Anschauung*), a term that means "looking at" and is used to refer to particular, concrete objects.<sup>119</sup> The senses intuit (view) and represent appearance (A42/B59). Representations are engaged with thought to produce concepts (A50/B74) and the knowledge of representations and concepts is a knowledge of forms. All of these terms—representation, concepts, and forms—are key to how Wittgenstein and Brandom discuss Kant. What is at stake in these discussions is how Kant describes the movement from one representation to the next, in other words, how continuity occurs, even though our consciousness exists moment to moment. In the example of Dave and the umbrella above, there was a gap between Shayna's statement and Dave's action. Here, in Kant, there is an explanation of how a gap is traversed.

Kant says that we situate objects in space, which is universal and a priori. It is something we understand implicitly. Remember that for Plato, a perceived object and a perceiving viewer meet in space, and it is this in-between that there is a possibility for shared perception. For Kant, space is internal to the subject, and that subject thinks in time, a process that is explicit. He uses the activity of drawing a line as an example, where one goes from point to point in a moment by moment movement, where the consciousness bridges the points to form a continuity. A line is a concept. "But a concept is always, as regards its form, something universal which serves as a rule" (A106).

Brandom notes that for Kant, rules make concepts explicit. Kant actually proposes a double trajectory for knowledge: one path engages necessary rules, while the other is concerned

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<sup>119</sup> Immanuel Kant, and Gary C. Hatfield, *Prolegomena to Any Future Metaphysics That Will Be Able to Come Forward as Science: With Selections from the Critique of Pure Reason* (Cambridge: Cambridge University Press, 2004), xxiii.

with contingent rules. General logic consists of necessary rules, rules without which reason (*Verstand*) would be impossible. For example, syllogisms are necessary rules and produce valid inferences.<sup>120</sup> Contingency often enters into necessary rules, however. Take the necessary rule that all single men are bachelors. A syllogism can be formed by saying that John is a single man, therefore he is a bachelor. It is a contingency that “John” is single, since the particulars of this individual are unknown. Texts that state divine instruction can therefore be understood to contain necessary rules, but there is also contingency within works that are composed from different ideological strata.

While logically valid rules can be applied to any set of objects, Kant notes that by bringing a representation under a general rule, we are at least two steps removed from an object: we are thinking “a representation of a representation of it” (A68/B93). These representations form a judgment. Kant recognizes that this causes problems (A132/B171), but it is Wittgenstein that will raise the stronger objection in his *Philosophical Investigations*.

Wittgenstein begins with an inquiry similar to Sperber’s, where one person’s articulation could be interpreted in multiple ways. As we noted above, Shayna’s remark about the rain could have been understood as an injunction to take an umbrella, simply stay at home, or some other course of action. That Dave chooses one particular course does not necessarily mean that that was the course Shayna meant. Wittgenstein observes at §198, “any interpretation still hangs in the air along with what it interprets, and cannot give any support. Interpretations by themselves do not determine meaning.”<sup>121</sup> If Dave, upon hearing Shayna’s utterance, grabs an umbrella, is he obeying a rule that says “A declaration that it is raining requires an umbrella”? Could not

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<sup>120</sup> Huaping Lu-Adler, “Kant and the Normativity of Logic,” *European Journal of Philosophy* 25, no. 2 (2017): 212.

<sup>121</sup> Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (New York: Macmillan, 1968), 80.

there exist a situation where Shayna danced the jitterbug and Dave would understand that such a dance, in the context of their communication with each other, meant that it is now raining?

Wittgenstein suggests that any action could be made out to accord with a rule, but it has to be interpreted correctly. In other words, it is much harder for Dave to interpret a dance as a substitute for the declarative sentence, as he has to remember that there is now a rule that the dance means that particular declaration.<sup>122</sup> This rebuttal to Kant's theory of representation is called the "regress argument."

Wittgenstein, according to Brandom, solves the regress problem by claiming that "proprieties governed by explicit rules rest on proprieties governed by practice."<sup>123</sup> But he also notes that a distinction should be made between behavior and intentional, rule contentful acts. When there is a regularity in the performance of certain activities, then the practitioner is not so much following a rule as simply doing something. Thus, even though the English language has a rule that says "plural subjects require plural verbs," a child who has learned to speak through the examples of the speakers around her, cannot articulate the rule that she naturally performs. For the child of five, the rule is implicit in her speech. However, if she says "the boys is nice," because she also heard someone say this, then one could ask how is it decided, to use the plural in some sentences, but not in another? To inform her that there is a rule (maybe not comprehensible at the age of five, but probably by ten) is to introduce normative assessment into her speech practice.

Brandom looks to Kant's logic lectures and the discussions of ought, or *sollen*, to steer a course between a regularity of performance that does not recognize implicit rules, and acts that

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<sup>122</sup> See Thomas McNally for helpful examples in Thomas McNally, *Wittgenstein and the Philosophy of Language: The Legacy of the Philosophical Investigations* (New York: Cambridge University Press, 2017), 57-60.

<sup>123</sup> Brandom paraphrases Wittgenstein. Brandom, *Making It Explicit*, 20; Wittgenstein, *Philosophical Investigations*, 81.

can be assessed by reference to rules which are still implicit because they belong to customs, practices or institutions.<sup>124</sup> For Kant, when we act as we ‘ought’, we attempt to reach what he calls the highest good. This begins with an examination of false cognitions and moves toward the application of formal rules to our thinking.<sup>125</sup> We do this through constructing logical inferences, or inferences that are based in pure-logical rules. Brandom’s reference to this—along with citations to three of Wittgenstein’s criteria for performance—custom, practice, and institution—marks a shift from Kant’s subjective process to one where an interpretation is held up to a communal standard. This marks Brandom’s work as particularly suited to performances such as ritual. Moreover, when trying to determine what inferences an interpreting community identifies in ritual propositions, his criteria for assessing interpretation allows us to construct a theory of thinking ritually.

### **3. Narrativity**

Seven out of the eight chapters of Mishnah Yoma are a narrative of the High Priest’s activity on the Day of Atonement. When talking about narrativity, theorists typically build on E. M. Forster’s narrative theory. Seymour Chatman, for instance, says that a story is traditionally understood as a chronicle (x happened, then y happened), but when plot is added (y happened *because* x happened), a narrative occurs. However, even in the mere sequencing of events, readers will seek a structure and assume causation. When a text’s information is implicit, “the king died and now the queen is dead,” a deep structure can be created. As in the previous discussion above, this sentence is open to interpretations such as “the queen died of grief,” or “the queen caught the same virus the king died from.” This can be contrasted with narratives

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<sup>124</sup> Brandom, *Making It Explicit*, 29.

<sup>125</sup> Hartman and Schwarz’ translation of Jäsche’s *Logic* contains Kant’s own notes. This explanation, by Kant, is attached to his discussion of belief in the “Logical Perfection of Cognition.” Kant, *Logic*, 75.

that explicitly provide reasons, “the queen died of grief after the death of her husband,” which perform at a surface level.<sup>126</sup> Another type of sentence depicts what Chatman calls revelatory plots, a state of affairs that is revealed which details existents and is focused on a character.

Gerald Prince proposes several attributes of narrativity: texts which display a passage of time, and are relevant to that passage; involve some sort of conflict; are made up specific events; and are meaningful to the human project.<sup>127</sup> In the first instance, the narration of change, “the king was unhappy until he met the queen, but then was very happy,” has a higher narrativity than “the king was unhappy.” A sense of conflict or contrast also increases narrativity, such as “the dark clouds released brilliant white hail.” General statements, such as “the days of summer are long,” have less narrativity than a statement such as “we stayed and played until the sun set, long after supper.” Finally, Prince notes that organizing information into a retrograde focus makes it “easy to find...all the psychological, historical, or esthetic determinants that we want.”<sup>128</sup>

Mishnah Yoma chronicles the actions of the High Priest, fulfilling a number of Chatman’s and Prince’s conditions for a narrative and narrativity. There is plot, for instance, when the narrator raises the possibility that the priest could forget the sequence, not to mention contingency plans if he should die before Yom Kippur. The deep structure, however, comes from the texts, practices, and events that arose in between the account in Lev 16, which Yoma follows, and its own composition. These discourse layers, which also include traditions that the Priestly writers of Leviticus also interacted with, are the conflicts behind each of Yoma’s differences from Leviticus. Sometimes these conflicts are unspoken, such as when the High Priest is depicted as uttering more confessions than in Leviticus, but elsewhere they are explicit,

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<sup>126</sup> Seymour Benjamin Chatman, *Story and Discourse: Narrative Structure in Fiction and Film* (Ithaca, N.Y: Cornell University Press, 1978), 45-6.

<sup>127</sup> Gerald. Prince, *Narratology: The Form and Functioning of Narrative* (Berlin; Mouton, 1982), 160.

<sup>128</sup> Prince cites Gérard Genette’s article “Vraisemblable et motivation.” Prince., 157.

as when two rabbis differ in the time of a sacrifice. At least two subsidiary instances of narrativity are present as well: the increase in the number of priestly immersions, as well as the use of confession linked with lay practice in the community. In Chapter Three I will argue that these communal rituals are inserted into the Temple text in order to bring the power of that lost rite into the present day.

#### **a. Paradigmatic Structure**

The thirty-four lines of Chapter 16 in the book of Leviticus provide the instructions for the Day of Atonement (the tenth day of the seventh month). This is considerably shorter than the seven chapters of the mishnah that describe the Day. The biblical account is foundational to the rabbinical account: the rabbis who wrote Yoma were not direct witnesses to the Temple rituals, but they did have the biblical scroll. Although the Mishnah is not an explicitly interpretive text, like the midrashim, the narrative of Yom Kippur follows the general outline of the biblical account and can be understood as a parallel text.<sup>129</sup> Joshua Levinson, in his work on midrash, calls the composition of supplementary material to a biblical account “two tales in one.”<sup>130</sup> For readers of both texts, each text will always influence the reading of the other.

Most importantly, Levinson notes the paradigmatic relation of a text that expands the meaning of another text. The interchangeability of parts of a syntactic structure goes back to the linguist Ferdinand Saussure, although the term paradigmatic was coined by Roman Jakobson.<sup>131</sup> Saussure, beginning with the simplest of linguist units, built a theory of language. In order to communicate, he said that there must be a sequential ordering, but for each unit, associative

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<sup>129</sup> Stökl Ben Ezra, *The Impact of Yom Kippur on Early Christianity*, 23.

<sup>130</sup> Joshua Levinson, “Dialogical Reading in the Rabbinic Exegetical Narrative,” *Poetics Today* 25, no. 3 (Fall 2004): 505.

<sup>131</sup> Roman Jakobson, *Selected Writings*, vol. 2 (The Hague: Mouton, 1971), 325.

choices are made.<sup>132</sup> This two-step system of communication underlies not only speech, but also visual and performance-based action (such as theater). Emile Benveniste says that the linguistic structure created by communicative acts is subjective. Enunciation, definitionally, requires an actor who relates to the events that they narrate.<sup>133</sup> But the narration is a product of a discursive formation of previous texts and ideas. In Chapter Two, we will see how a dispute regarding the order of sacrifice in Leviticus draws in multiple strands of thought over generations. While the two rabbis may not have been fully aware of the range of texts that discuss the עולה offering, concerns about blood that shaped these discussions, or even how the polemics between the Aaronides and Levites contributed to interpretive traditions, the stance that each rabbi took was conditioned by these historical layers. Each of their positions stems from a paradigmatic storehouse of themes.

If a work of art, such as a text or painting or dance, is a catalyst for associative meanings, then what happens to Benveniste's subject? Another article by Levinson posits that "the ideological apparatus of a society fashions subjects."<sup>134</sup> But this subject is objective, if we follow Levinson's citations. Levinson states that an "individual become a subject only once he has accepted upon him or herself a narrative function."<sup>135</sup> This statement refers the reader to Terry Eagleton, who cites Jacques Lacan. Lacan gives us the example of a baby before a mirror, who makes the connection between its own movement and what it sees moving in front of it.<sup>136</sup> In the case of Levinson's subject, this "image in the mirror" is the narrative character.

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<sup>132</sup> Ferdinand de Saussure et al., *Course in General Linguistics* (LaSalle, Ill: Open Court, 1986), 118-120.

<sup>133</sup> Benveniste, *Problems*, 227.

<sup>134</sup> Joshua Levinson, "Post-Classical Narratology and the Rabbinic Subject," in *Narratology, Hermeneutics, and Midrash: Jewish, Christian, and Muslim Narratives from the Late Antiquity through to Modern Times*, ed. Constanza Cordoní and Gerhard Langer (Vienna: Vienna University Press, 2014), 83.

<sup>135</sup> Levinson.

<sup>136</sup> Jacques Lacan, "The Mirror Stage as Formative of the 'I' Function," in *Écrits*, trans. Bruce Fink (New York: W.W. Norton & Co., 2002), 76.

Comprehension through an image, is of course, the objective stance as noted by the ancients. Eagleton observes that even when there is a recognition of oneself through what one sees (or hears), it may not be the whole of what one is.<sup>137</sup> Thus, when a narrative ideology creates a subject, the reader is presented with an image “in a mirror” that may or may not fully fit the reader’s “I.”

Levinson’s insight works on two levels for Yoma: on the one hand, the actions of the Leviticus High Priest are viewed by the reading rabbis; but on the other, since Levinson is speaking of the operations effected by interpretation, the relationship between Leviticus and Yoma itself forms the category “subject.” In the latter case, the repeating rabbis “see” the Temple through Leviticus in the operation of the conjunction of the texts. But there is also another “seeing” that occurs in Mishnah Yoma: the text includes corrections to the main narrative, presented as direct speech. These assertions purport to be witnessed accounts, but the historical reality is that these accounts are generational memories. Memory thus becomes a third tale, and one that the rabbi-listeners to the narrative presumably cite.

## **b. Speech Acts**

The Hebrew Bible relays two types of law, apodictic and casuistic. Apodictic law is clearly established law, exemplified by divine commands, while casuistic law is case law. In linguistic terms, a command is the illocutionary force behind a speech act. Commands and rules define new forms of behavior, and the utterance of them has a certain force. This contrasts with utterances such as “let there be light,” where, according to the text, light came about through the utterance of the sentence. This type of utterance is termed performative and is focus of J. L. Austin’s work.

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<sup>137</sup> Terry Eagleton, *Ideology* (London: Verso, 1996), 145.

One of Austin's examples is that of a recognized authority pronouncing a couple "man and wife." Two things are actually at work in this statement: first, a recognized authority (ship captain, rabbi, judge, etc.) must be the speaker, and secondly, it must be self-referential (the resultant state of marriage is named in the pronouncement by way of the old-fashioned designation "man and wife").<sup>138</sup>

Leviticus 16 reports the Divine commands to Moses regarding how Aaron should conduct what became the Yom Kippur service. These commands fulfill the requirement that a performative must be enunciated from a recognized authority, but as indirect speech (twice removed), they are performances of making an order. For Austin, the first-person indicative is either explicit (I pronounce you man and wife) or implicit ([I order you to] leave the room) in a performative.<sup>139</sup> Austin characterizes an implicit performative as a mood, and is not concerned with tense. Searle narrowly confines performatives to explicit statements in the first person singular present indicative.<sup>140</sup> Statements that begin "I order" make explicit the illocutionary force of the order in a way that simply stating the order "leave the room" do not.<sup>141</sup> He classifies illocutionary forces such as the bare "leave the room" as declarations, but he is willing to concede that a divine declaration, such as "let there be light," does not need "I order" to perform by saying.<sup>142</sup>

A speech act, on the other hand, is performed by speaker meaning. Austin tried to determine what distinguished a performative act from a constative or declarative statement by separating an utterance (locution) from its meaning (illocution). A common example of the

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<sup>138</sup> Benveniste, *Problems in General Linguistics*, 236-7.

<sup>139</sup> John Austin, *How To Do Things with Words*, ed. J. Urmson and Marina Sbisa (Cambridge, MA: Harvard University Press, 1975), 58.

<sup>140</sup> John Searle, "How Performatives Work," *Linguistics and Philosophy* 12, no. 5 (October 1989): 536.

<sup>141</sup> Searle., 540.

<sup>142</sup> Searle and Vanderveken, *Foundations of Illocutionary Logic*, 56-7.

relationship between locution and illocution is a direction question to a stranger: do you know the way to the post office? The question itself is merely a locution, which has a determinate sense and reference.<sup>143</sup> The questioner does not mean for the person to respond “yes” and walk on, she expects the person to give her directions. The illocutionary force behind the question is readily understood in the interaction. Searle defines a directive, or trying to get another person to do something, as an illocutionary force that underlies a speech act.<sup>144</sup> Dennis Kurzon develops Searle’s work of illocution in legal language, providing us with a way to look at both Leviticus and Mishnah Yoma.

Kurzon follows Stephen Levinson in including implicit statements, such as imperatives, in the category of performatives.<sup>145</sup> Kurzon refers to the pragmatic branch of linguistics to understand directives in their legal context,<sup>146</sup> which focuses not on the doing of the order of the order, but on the doing of the statute. Thus laws are made with speech acts that follow a two-step process of promulgation or enacting, plus the orders themselves. The promulgation or enactment occurs in Leviticus 16: 2, when YHWH directs Moses to direct Aaron. The direction to Moses is given in the imperative “[I order you] + you will speak,” followed by the jussive “he shall not come...” The subsequent directions to Aaron (through Moses) are in the jussive, a

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<sup>143</sup> Levinson, *Pragmatics*, 236.

<sup>144</sup> John Searle and Daniel Vanderveken, *Foundations of Illocutionary Logic* (Cambridge: Cambridge University Press, 1985), 52.

<sup>145</sup> Dennis Kurzon, *Pragmatics and Beyond: It Is Hereby Performed: Explorations in Legal Speech Acts* (Amsterdam: John Benjamins Publishing Co., 1986), 7; Stephen Levinson, *Pragmatics* (Cambridge: Cambridge University Press, 1983), 234.

<sup>146</sup> He refers the reader to Dell Hymes, *Foundations of Sociolinguistics: An Ethnographic Approach* (Philadelphia: University of Pennsylvania Press, 1974). Hymes relies in part on Jakobson and other members of the Prague Circle. Cf. Jakobson, *Selected Writings*.

biblical Hebrew verb form, often in the third person, that conveys a command.<sup>147</sup> In Kurzon's theory, there is an authoritative enactment, followed by the actual order.

As already noted, Searle cites the creative speech of Genesis 1 as an instance where illocutionary forces perform. Presumably, he is looking at an English translation in this assessment, but the Hebrew verb in Genesis 1:3 is also in the jussive. Hebrew, unlike the French Benveniste examines or the English that Searle and Austin work with, can use the third person imperfective to command. Moreover, just as God creates by speaking, the Divine order, as a statute, is a performative. Kurzon is not concerned with the question of the hearer's obedience, which, of course, is necessary for the speech to actually *do* something. In actual fact, the Leviticus orders come on the heels of Aaron's sons' disobedience of Divine commands. Instead, the performative lies in the lawmaker creating the law through speech.

Mishnah Yoma does not contain a divine order. Instead, the authority of the text comes from the canonical texts, in that it portrays what was commanded.<sup>148</sup> In linguistic philosophy, this speech is in the genre of necessary rules. Much of the mishnaic narrative is conveyed in the *benoni*, or participle form. Yechezkel Kutscher, in a foundational article on the Hebrew language, states that the Mishnaic participle indicated either present or future.<sup>149</sup> Yitzhak Frank

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<sup>147</sup> Bruce Waltke and M. O'Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake, IN: Eisenbrauns, 1990), 568.

<sup>148</sup> Elizabeth Alexander notes the discussion of apodictic authority in Jacob Neusner and David Kraemer (who follows Halivni). She notes that Kraemer locates the authority of the Mishnah in its direct commands, a formal literary feature of the text. Neusner, in a series of sweeping generalizations, forms a trajectory from the formulation of the Priestly codes through the Mishnah's "historical context." In a later chapter, he addresses the oral nature of tannaitic reception, pointing to a transmission of concepts ("the unsounded pattern") beneath the surface of syntactical relationships. Alexander responds that it is not the text, but how the text was used in communities, that establishes authority. This is a different tact than the divine authority I point to above, but is related to theories of dialogism that will be discussed below. Alexander, *Transmitting Mishnah*, 75; David Kraemer, *The Mind of the Talmud* (New York: Oxford University Press, 1990), 11-15; Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Chicago: The University of Chicago Press, 1981), 71-75 and 244-5.

<sup>149</sup> Edward Yechezkel Kutscher, "Mishnaic Hebrew," in *Encyclopaedia Judaica*, vol. 16 (Jerusalem: Keter Publishing House, n.d.), 1600.

adds that halakhic rulings are “often” formulated in the present tense.<sup>150</sup> The prescriptive quality of the participle would seem to pragmatically link the narratively described actions of the High Priest to the Divine commands of Leviticus.

Apodictic law is narrowly defined as directives. Mishnah Yoma does have instances of this type, particularly in chapter eight, when the discussion digresses to Shabbat practices. However, the narrative of the High Priest carries another sense of apodicticity, in that it carries the divine directive to conduct an atonement ritual in a particular way. Breuer recognizes this, while grappling with the problem of tense-switching in Yoma. In my opinion, Breuer does this unsuccessfully, however he does bring up the work of Bernard Comrie on aspect.<sup>151</sup> There are a number of places in Yoma where aspect does occur, furthering evidence of depth and narrativity.

The problem here is that the Temple is destroyed and a statement such as “[The Cohen Gadol] puts both of his hands on [the ox] and confesses” which is related three times in the rabbinic atonement ritual, cannot be executed on the ox or goat. In linguistic terms, this would be an instance of an “infelicitous” utterance, because there was no conventional procedure in existence to do it.<sup>152</sup> Felicity might hold if one were to read these verbs as expressing the future tense, or halakhah for a time when the Temple could be rebuilt, but the narrative setting does not give any indication that that is the intent of the writing.<sup>153</sup> In order to understand how Mishnah

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<sup>150</sup> Yitzhak Frank, *Grammar for Gemara: An Introduction to Babylonian Aramaic* (Jerusalem: Ariel: United Israel Institutes, 1997), 11.

<sup>151</sup> See Comrie, *Aspect*, 3, for the section that Breuer cites; Yochanan Breuer, “פעל ובינוני בתיאורי טכס במשמה,” *Tarbiz/תרביץ* 56, no. 3 (1987), 319.

<sup>152</sup> Austin, *How To Do Things with Words*, 26.

<sup>153</sup> Contrary to Yochanan Breuer, who argues that the benoni indicates halakhah for a future Temple. Breuer, “פעל ובינוני בתיאורי טכס במשמה.”

Yoma performs, one needs to go beneath the surface structures of individual sentences and look at how these sentences are structured into a narrative.

#### **D. State of the Field**

The past thirty years has seen a shift from philological studies to scholarship that not only engages structuralist and post-structuralist theory, but attempts to locate the writing in its cultural context.<sup>154</sup> As a number of scholars have noted,<sup>155</sup> Foucault, while he adds some important critiques to the Kantian notion of a thinking subject, ultimately fails to circumvent it. Thus, in searching the current literature on the Mishnah, I have attempted to read for how the author has engaged with the problem of subjectivity. I have sought authors who are specifically interested in legal narratives. To this end, I will narrow my focus below to Moshe Simon-Shoshan, Barry Wimpfheimer, Ishay Rosen-Zvi, and Joshua Levinson.

Moshe Simon-Shoshan's *Stories of the Law* is an impressive survey of instances of narrative throughout the six orders of the Mishnah. The focus of his work is on legal narratives that begin בַּעֲשֵׂה, "it happened that," and while this is not the case with Mishnah Yoma, Yoma fits within the genres of stories and accounts of events that he says characterize classical Mediterranean law.<sup>156</sup> He provides detailed definitions of narrative and narrativity, the function of tenses, and the category of apodictic narrative. Simon-Shoshan classifies instances of narrativity in the Mishnah from low to high. He defines narrativity as "the confluence of two

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<sup>154</sup>See, for instance, Charlotte Fonrobert, "On 'Carnal Israel' and the Consequences: Talmudic Studies since Foucault," *The Jewish Quarterly Review* 95, no. 3 (Summer 2005): 462–69; Moshe Simon-Shoshan, "Between Philosophy and Foucault: New Syntheses in Contemporary Mishnah Studies," *AJS Review* 32, no. 2 (2008): 251–62.

<sup>155</sup> Besides Christopher Gill and Sergey Dolgopolsky's work noted above, see Daniel Boyarin and Elizabeth Castelli, "Introduction: Foucault's The History of Sexuality: The Fourth Volume, or, A Field Left Fallow for Others to Till," *Journal of the History of Sexuality* 10, no. 3/4 (October 2001): 357–74.

<sup>156</sup> Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012), 223.

distinct element in a text which I call ‘dynamism’ and ‘specificity’.” Dynamism has to do with textual transitions, whereas specificity is time-bound.<sup>157</sup> This captures Gerald Prince’s definition of narrativity as a juxtaposition of events to their ending.

Overall, Simon-Shoshan expands the discussion of the Mishnah by introducing narrative studies. He confines himself to linguists, only mentioning rhetorical concerns briefly, in the last chapter. Here he notes the dialogic relationship between cited rabbis, without considering how the text might dialogically engage the reader. A scholar whose analysis sets out to read rabbinic works from a literary critical perspective, Barry Wimpfheimer, expands his inquiry into dialogical relationships from that between rabbis to relationships between the narrative level of rabbis, the level of depicted authors and the level of interpreting readers.<sup>158</sup> While Wimpfheimer studies Talmudic legal stories, his methods more closely resemble the approach I am advocating.

Wimpfheimer sees narratives as “a medium through which individuals process the social world that they inhabit.” The telling of the High Priest’s ritual would seem to match Wimpfheimer’s reading of late lengthy narratives.<sup>159</sup> The examples he uses are of narratives that relate Babylonian cultural moments, whereas Mishnah Yoma inserts cultural moments into the telling of Temple rite. However, even within the Talmudic tales, Wimpfheimer sees the implied author juxtaposing culture with rabbinic dialectic. He follows Bakhtin in this analysis.

Wimpfheimer’s mentors were Shamma Friedman and David Halvini.<sup>160</sup> Although he does not cite either Chatman or Gerard Genette, who have both developed theories about the

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<sup>157</sup> Simon-Shoshan, 16.

<sup>158</sup> Barry S. Wimpfheimer, *Narrating the Law: A Poetics of Talmudic Legal Stories*, 1st ed, Divinations, Rereading Late Ancient Religion (Philadelphia: University of Pennsylvania Press, 2011), 4.

<sup>159</sup> Wimpfheimer., 159.

<sup>160</sup> It is noteworthy that while Wimpfheimer credits both Friedman and Halivny, Simon-Shoshan divides the discussion of the redactor’s handling of source material into two groups. Simon-Shoshan labels the “textual approach” the method that Shamma Friedman and Judith Hauptman adopt, whereas Martin Jaffee and Elizabeth Alexander pursue a “performative approach.” Simon-Shoshan, *Stories of the Law*, 97.

implied author, his presentation of the *stam* as an interpreter and shaper of material resonates with Chatman. He also notes that the *stam*, as interpreter, is also a reader. Both Wimpfheimer and Joshua Levinson cite David Herman, who works on a story's inner relationships and how these constructions impact readers.<sup>161</sup> Levinson works primarily in midrash, and he too is interested in the dialogical relationship between a reader who becomes an author. He also is interested in the subject that texts create.

When Levinson uses the term dialogical, he says that he invokes Bakhtin, “who did not develop a theory of reading, [but] his works do contain numerous references to a listener who functions in a uniquely active capacity.”<sup>162</sup> A community of listeners is, perhaps, the more historically true depiction of who the individuals who ultimately wrote the Mishnah were. As Martin Jaffee and Elizabeth Alexander describe sage circles, mishnaic accounts were “orally fluid” during the tannaitic period, leading up to the written version that became our Mishnah.<sup>163</sup> Jaffee and Alexander both focus on the performance of repeating, which includes supplementation and modification. Jaffee envisions a “scripted performance,” interpreted by the audience. It is this supplementary material that forms “a textual entity in its own right.”<sup>164</sup> Bakhtin asserts that a given utterance is understood against other known utterances, which the listener “apperceptively” filters.<sup>165</sup> Levinson brings this conjunction of speaker/hearer or author/reader to the construction of midrash, but it applies in an even more complex way to mishnah, where biblical text, hearer of text and hearer of interpretation circulate.

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<sup>161</sup> David Herman, *Storytelling and the Sciences of Mind* (Cambridge, Massachusetts: The MIT Press, 2013); David Herman, ed., *Narrative Theory: Core Concepts and Critical Debates* (Columbus: Ohio State University Press, 2012); David Herman, “Scripts, Sequences, and Stories: Elements of a Postclassical Narratology,” *PMLA* 112, no. 5 (October 1997): 1046–59.

<sup>162</sup> Levinson, “Dialogical Reading in the Rabbinic Exegetical Narrative,” 502.

<sup>163</sup> Alexander, *Transmitting Mishnah*, 74.

<sup>164</sup> Jaffee, *Torah in the Mouth*, 101 and 105.

<sup>165</sup> Mikhail Bakhtin, “Discourse in the Novel,” in *The Dialogic Imagination: Four Essays*, ed. Michael Holquist, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 2008), 281.

As mentioned above, Levinson refers to the “ideological apparatus of a society [that] fashions subjects.”<sup>166</sup> As he expresses it, this is “by no means” the post-Cartesian subject, and indeed, his footnotes lead the reader to Lacan and an objective view of the understanding. Despite this disclaimer, however, Levinson goes on to speak positively of “an emergence of new technologies of the self” as proposed by Foucault. Oddly, Levinson cites Christopher Gill in support of Foucault’s analysis of Christian confession. He does this through noting Gill’s introduction of the debate over *The Care of the Self*, without following through to Gill’s claim, that Foucault displays a “subjectivist-individualist” point of view, in contrast to the “objectivist-participant” model that underlies Hellenistic-Roman thought.<sup>167</sup> Levinson notes that Pierre Hadot and Shadi Bartsch disagree with Foucault, but instead elevates Guy Stroumsa’s positive assessment.

In pursuing evidence of the self in rabbinic literature, Levinson cites Mira Balberg’s recent work, as well as references to Stoic literature, as represented by Epictetus. Again, Levinson mentions Gill, without acknowledging that Gill argues against characterizing Epictetus as promoting a form of self-consciousness. As discussed above, Gill is emphatic in his assessment that Epictetus’ three-fold program represents an objectivist-participant model. Instead, he uses Gill’s name associatively, before citing Hadot and Richard Sorabji.<sup>168</sup> Balberg’s study of purity practices in the Mishnah engages Foucault’s idea that the self is a “discursive construct...formed through certain social practices.”<sup>169</sup> While noting that Foucault’s *The Care of*

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<sup>166</sup> Levinson, “Post-Classical Narratology and the Rabbinic Subject,” 83.

<sup>167</sup> Gill, *The Structured Self in Hellenistic and Roman Thought*, 343. Gill begins his presentation of the current interest in a late-antique self on page 335.

<sup>168</sup> Levinson, “Post-Classical Narratology and the Rabbinic Subject,” 88.

<sup>169</sup> Mira Balberg, *Purity, Body, and Self in Early Rabbinic Literature* (Berkeley: University of California Press, 2014), 11.

*the Self* has been “harshly criticized,” she says that the techniques he traces are “extremely influential.”<sup>170</sup>

Balberg links the Kantian<sup>171</sup> conception of intention to purity practices, while also observing that care underlies intentional practice. She argues that Eilberg-Schwartz “does not account for the *mental mechanism* through which an object acquires its new ‘name’ and thus becomes susceptible to impurity” (italics hers).<sup>172</sup> This mental mechanism is the personal relationship between the owner of an object and the object, characterized by care. She uses Harry Frankfurt’s work to say that care is a “self-reflexive process.”<sup>173</sup> While Balberg’s focus is on a different topic in mishnaic literature from Yoma, the exploration of tannaitic thought that Levinson initiates through her is important to note. His essay seems to acknowledge the pitfalls of a Cartesian self while brushing aside the critiques of that self in the literature he cites. Balberg makes a counter case for a tannaitic self, which is not on the same order as a culturally constructed subject.

At the end of his section on Epictetus, Levinson asserts: “By making proper legal practice contingent upon a certain type of attention to how one does what one does, rabbinic legal discourse actually creates a reflexive second-order or dialogic self that promotes ‘a continuous vigilance and presence of mind’.”<sup>174</sup> The citation is from Robert Dobbin, reflecting on Epictetus. In regards to Yoma, the problem can be expressed as how a second century individual or community can reflect on “how or what one does” when the legal directive cannot be carried out.

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<sup>170</sup> Balberg.

<sup>171</sup> Carr, *The Paradox of Subjectivity*, 40. Carr says that while intentionality is a term developed after Kant, intention is “absolutely crucial to his project.” Thinking engages “our knowledge of the sensible world” and is thus deliberative.

<sup>172</sup> Balberg, *Purity, Body, and Self in Early Rabbinic Literature*, 88. Howard Eilberg-Schwartz, *The Human Will in Judaism: The Mishnah’s Philosophy of Intention* (Atlanta: Scholars Press, 1986).

<sup>173</sup> Balberg, *Purity, Body, and Self in Early Rabbinic Literature*, 89. See Harry Frankfurt, *The Importance of What We Care About: Philosophical Essays* (New York: Cambridge University Press, 1988), 83.

<sup>174</sup> Levinson, “Dialogical Reading in the Rabbinic Exegetical Narrative,” 89.

Unlike encountering a broken table whose owner decides that it can be used as a tray—an example Balberg uses and Levinson repeats—the narrative of the High Priest, as a depiction of the activities of the High Priest, contains no second-order reflection. Indeed, on the level of reflection, it is like an iron ball that is impossible to swallow. Self-reflexivity does appear in the expansion of the High Priest's confession, which is emphasized through a triple repetition. However, as a riteme, it functions within a communal setting, and thus still within Gill's objective-participant model.

Ishay Rosen-Zvi reviews Foucault's *The Care of the Self* in his book *Demonic Desires*. In considering rabbinic discourse on the *yetzer* (inclination), Rosen-Zvi concludes that it remains a force or demon that comes from outside, to reside within the human heart. For this reason, the struggle to overcome evil is not a self-reflexive struggle, as a person shaped by post-Cartesian thinking would have it, but instead, is a struggle with an intruder.<sup>175</sup> Interestingly, this view can also be found in early Christian ascetic literature, notably in the writings of Origen and St. Antony.<sup>176</sup> In another article, that reviews a broader selection of mishnaic topics, Rosen-Zvi concludes that “the subject...formed by rabbinic halakha is flat; its thoughts and deeds are on the same plane.”<sup>177</sup>

In chapter eight of Yoma, cited at the beginning of this paper, the rabbis discuss atonement for sins committed between individuals. Repentance (תשובה) literally means turning around, a bodily motion used to describe an inner act. It is a term that merits further investigation, especially in light of discussions opened by David Lambert and others. But the

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<sup>175</sup> Ishay Rosen-Zvi, *Demonic Desires: Yetzer Hara and the Problem of Evil in Late Antiquity* (Philadelphia: University of Pennsylvania Press, 2011), 132.

<sup>176</sup> Rosen-Zvi., 38-40.

<sup>177</sup> Ishay Rosen-Zvi, “The Mishnaic Mental Revolution: A Reassessment,” *Journal of Jewish Studies* 66, no. 1 (2015): 56.

remedy prescribed for sins against one's fellow is not self-reflective, in the sense of a second-order deliberation. Instead, it requires going to his colleague and "appeasing" or attending to his wants.

## **E. Conclusion**

This project will be positioned in the discourse on thinking in Late Antiquity. Because this entails a discussion of an emergent sense of self in the writing of some theorists, the paper will be attentive to how the wider culture expresses perception and thought.

The text will be examined for its relationship with oral traditions, as evidenced in its layers of commentary. Moreover, the layers of high priest narrative, the shadow layer of Leviticus, and commentary will be viewed dialogically, to reveal cultural concerns. Both in its origins as traditions that were orally performed and in its relation to a legal performative text, Mishnah Yoma raises philosophical questions of audience receptivity. These textual markers help us to postulate why this genre emerged in the wake of a need for some form of atonement rite.

The project takes its place in secondary literature that discusses issues of subjectivity and objectivity in Late Antique philosophy. By proposing that Mishnah Yoma represents an objective-participant model of thought, I hope to highlight a different cultural approach to problem solving.

## Chapter One: The Problem of Atonement

Those of us who not only know synagogue liturgies on the Day of Yom Kippur, but are also aware that such liturgies were in the process of formation during the first centuries of the Common Era, can ask “why didn’t the tannaim institute ritual practices for Yom Kippur after the destruction of the Temple?” Or, since tannaitic literature records traditions, “why isn’t there evidence that the destruction of the Temple created a problem, especially for observing Yom Kippur?” We can ask the first question because we know that the presupposition, that liturgies existed in the time of the tannaim, is true. We could, however, say that this presupposition contains ambiguities, because we do not know how aware the tannaim were of the practices at Qumran, nor do we know what types of services were held in synagogues, beyond Torah readings and blessings.

The biblical literature that the sages show that they knew raises other questions: “what is *kippur*?” and “what actions necessitates the need for *kippur*?” and, even more fundamentally, “how do actions affect the well-being of a community?” Each of these questions implies some missing piece of information—that *kippur* can be defined, that *kippur* addresses a need, and that actions affect the well-being of communities. The philosopher Sylvain Bromberger says that we know of the existence of this missing information because the questions provide us with what he calls their trace. Further, he says that non-why questions provide “an attitude of the speaker” whereas why questions “specify an aspect of the subject matter under question.”<sup>1</sup>

Put another way, an observer of history can ask the above why questions, but even actors aware of prayers and rituals would not be able to utilize these in service to the problem without first understanding the problem. Or, as Bromberger asks, “what conditions must correct answers

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<sup>1</sup> Sylvain Bromberger, *On What We Know We Don’t Know: Explanation, Theory, Linguistics, and How Questions Shape Them* (Chicago: University of Chicago Press, 1992), 164.

to why questions fulfill?”<sup>2</sup> Assuming that what began to be developed in the 3<sup>rd</sup> c. CE, a liturgy, was the “correct” answer to the problem, what steps did the generations of rabbis take to eventually conclude that liturgy atones, or certain types of prayer activity create a day that atones. For them, the why question would have been “why did the High Priest’s ritual on Yom Kippur accomplish atonement?” Assuming that ritual atoned, why did it atone? Bromberger would call this the P-predicament.

In the following we will see generations that wrestle with the nature of a transgression, with questions about what it causes, and what counteracts its effects. The last chapter of Mishnah Yoma represents a developmental point in articulating how the holy acts in the world. I have positioned it as the first to be studied towards uncovering rabbinic engagement with the problem of atonement because of its focus on inter-personal relations. The Priestly writings contain the seed of a shift from understanding wrongs as primarily a break with the deity. Leviticus 5 states that while a deliberate transgression is a sacrilege, it first requires repair of the human relationship that has been harmed. Mishnah Yoma’s author sets a trajectory of discussion to be taken up by future, Amoraic, rabbis, on the parameters of “appeasement” and the responsibilities of the injured party to reconcile.

As a whole, Mishnah Yoma follows Leviticus 16’s ritual sequence. The cosmology behind “the tenth day of the seventh month,” to purify the Sanctuary of accumulated defilement, lies even behind a reorientation to inter-personal repair. The idea that a misdeed is a force, as Numbers 25 articulates, threatens the covenantal relationship, but also threatens the community, through the counteracting force of divine wrath. It is the concern for community wholeness that

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<sup>2</sup> Bromberger, 7.

later rabbis ponder, and which Yoma's development of Lev 5 generates, that proves the importance of this last chapter in the mishnah.

But while there is continuity, the cosmology presented in this mishnah also flips the worldview of the rabbis' ancestors. The chapter begins with Mishnah Yoma 8.9 and a description of the issues it raises. We will then turn to a literary review of the Priestly strata, in order to position the traditions within the compositional layer. Having established that setting, it will be possible to see how the ancient world explained calamity and what actions it took to ameliorate it. Lev 5: 20-6 was rooted in this world, but it expresses a new way to understand *kippur*, in parallel with the sacrificial system. The last section of the chapter will return to the rabbinic corpus to reprise their contribution.

#### **A. Mishnah Yoma 8.9**

Whereas as much of tractate Yoma is a narrative of the High Priest's activities on Yom Kippur, Yoma 8.9 utilizes the authorial voice to present the halakhah that while the Day atones for transgressions between people and God, it does not atone for transgressions between individuals. The section abandons the narrative genre and directly confronts the problem of how atonement happens. The following chart reproduces the Kauffman manuscript: all of the sections of Yoma in this dissertation are taken from this edition. Unless otherwise noted, the translations of the Hebrew texts are my own.

The one who says: I will **חטא** and repent, I will **חטא** and repent, these will not accomplish repentance. I will **חטא** and Yom Kippur atones: Yom Kippur does not atone. **עבירות** between a person and God, Yom Kippur atones. Transgressions between [a person] and his colleague, Yom Kippur does not atone until he appeases his colleague. Rabbi [E]lazar ben Azaria expounds: “from all of your **חטא** before God, you will be purified” (Lev 16: 30b). Transgressions between a person and God, Yom Kippur purifies and between [a person] and his colleague, Yom Kippur does not atone until he **רצה** his colleague. Akiva said: happy are you, Israel! Before whom are you purified and who purifies you? Your father in heaven! As it is said: I will sprinkle pure water on you and you will be purified, etc. And He said: the mikveh/hope of Israel is God. Just as the mikveh purifies the impure, so the Holy One, blessed be He, purifies Israel.

האומר **אחטא** ואשוב **אחטא** ואשוב יאין מספיקים בידו לעשות תשובה **אחטא** ויום הכיפורים מכפר אין יום הכיפורים מכפר **עבירות** שבין אדם למקום יום הכיפורים מכפר ושבין לבין חברו אין יום הכיפורים מכפר עד שירצה את חברו **ט** את זו דרש ר' לעזר בן עזריה מכל חטאותיכם לפני יי תטהרו **עבירות** שבין אדם למקום יום הכיפורים מכפר ושבין לבין חברו אין יום הכיפורים מכפר עד **שירצה** את חברו **י** אמר עקיבא אשריכם ישראל לפני מי אתם מיטהרים ומי מטהר אתכם אביכם שבשמים שנו זרקתי עליכם מים טהורים וטהרתם וג' ואמרו ישראל יי מה מקוה מטהר את הטמאים אף הקבה מטהר את ישראל

I have not translated **חטא** as there is considerable debate over its correct English equivalent. The verb is used for a both deliberate and inadvertent offences, which can be further characterized by whether the acts violate ritual or moral imperatives. Further distinctions include a person who is “certain” of their deed and those who think they may have done something. These categories do not affect whether the root **חטא** is formed in the qal or piel stems. The above passage, as well as Lev 5, which will be examined below, use the qal.

According to the Brown, Driver, Briggs Lexicon, the first definition of the qal form of חָטָא is “miss a goal or way,” while the second is “sin.”<sup>3</sup> Jastrow’s first entry is “[to miss], to fail, err, sin.”<sup>4</sup> The understanding of miss, carried over from biblical Hebrew, is reinforced by the term עֲבִירָה, based on the stem עָבַר/pass, which means “light transgression.” As the previous mishnah states, light transgressions are transgressions against the positive commandments (e.g. keep Shabbat). But while חָטָא appears as the action for inadvertent offences in Lev 4, it also is used in Lev 5 for the deliberate acts of fraud, lying, and false oaths. These are offences against negative commands (do not lie, steal, etc.). The materiality implicated in these terms raises questions as to the culture’s conception of how acts, meeting or missing a mark, have an external life of their own.

The other term left untranslated is רָצָה, which is commonly translated as “appease,” implying that the injured person sets the terms.<sup>5</sup> The idea builds on Leviticus, where certain transgressions also need to be repaired by some form of compensation to the injured party. In Chapter Two we will see that this rabbinic idea has precedence in other literature that uses the term, in language related to sacrificial offerings.

By working back from Yoma to Leviticus to Numbers, we are sensitized to the issues in previous discourse layers and how these issues formed the genesis of the rabbis’ own thought.

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<sup>3</sup> Francis Brown, Samuel R. Driver, and Charles A. Briggs, *The Brown-Driver-Briggs Hebrew and English Lexicon* (Peabody, Mass: Hendrickson Publishers, 2010), 306.

<sup>4</sup> Brackets his. Marcus Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (Peabody, MA: Hendrickson Publishers, 2005), 449.

<sup>5</sup> This term will be discussed later in this chapter, as well as in the next. See its entry in Jastrow for the rabbinic use of the word. Jastrow, 1493.

## B. Scholarship on the Priestly Strata: Determining a Setting

The provenance of Leviticus has been contested since the beginnings of critical scholarship in the nineteenth century. As early as 1806, W. M. L. de Wette identified a foundational stratum, or *Grundschrift*, in Genesis and Exodus, which he claimed was composed from “stand-alone” pieces, and which were roughly the same material that would later be called the Priestly stratum.<sup>6</sup> He also recognized a legal stratum, which he held to be a later addition.<sup>7</sup> By mid-century, 1866, Karl H. Graf, building on de Wette, identified Leviticus 1-17, the legal stratum, as later than Leviticus 18-26, which was characterized by narratives. In 1883, Julius Wellhausen posited that Lev 17 should be included in the earlier material, but unlike de Wette, he did not feel that the narratives were pre-exilic since the rituals depicted therein lacked the “natural and agricultural context” of the First Temple period.<sup>8</sup> Beginning with A. Klosstermann in 1893, this section was referred to as *Heiligkeitgesetz* or Holiness Code.<sup>9</sup> The so-called legal material, now called the P source, was determined to be the latest document in the Pentateuch.

One of the earliest critics of Wellhausen was the Israeli scholar, Yehezkel Kaufmann, who wrote a multi-volume work over the years 1937-1956. Arguing against Wellhausen’s theory that the P source is post-exilic, Kaufmann asserted that its composition was begun under Josiah and completed in the early Persian period.<sup>10</sup> Indeed, Kaufmann understood the P source to be earlier than Josiah and the D source and used its setting, first within a portable tent, and

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<sup>6</sup> Konrad Schmid, “Has European Scholarship Abandoned the Documentary Hypothesis? Some Reminders on Its History and Remarks on Its Current Status,” in *The Pentateuch: International Perspectives on Current Research*, ed. Thomas Dozeman, Konrad Schmid, and Baruch Schwartz (Tübingen: Mohr Siebeck, 2011), 24.

<sup>7</sup> Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus* (Tübingen: Mohr Siebeck, 2007), 1.

<sup>8</sup> See Nihan, 3; Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Winona Lake, Ind: Eisenbrauns, 2007), 3-4.

<sup>9</sup> Israel Knohl, *The Sanctuary of Silence*, 3.

<sup>10</sup> See the English language abridgment, Yehezkel Kaufmann, *The Religion of Israel: From Its Beginnings to the Babylonian Exile*, trans. Moshe Greenberg (Chicago: University of Chicago Press, 1960), 154-5.

later at multiple sites, as a counter-point to D's identification of one chosen site. Kaufmann contrasts D's interdictions against the cult of high places with P's silence on this issue: he notes that P is concerned about the boundary of holiness between sanctuaries and the world, and takes the multiplicity of these sites for granted.<sup>11</sup> For these reasons, Kaufmann posited that P and D are separate collections. During Josiah's reign, the D source begins to emerge as binding Torah, but Kaufmann speculates that it was not until the time of Ezra-Nehemiah that the Levites' legal corpora were included in the Torah.<sup>12</sup>

Another Israeli scholar, Menahem Haran, also argued for an early, pre-exilic date for P. Writing in 1978, he narrowed the time span of the Priestly School to the reigns of Ahaz (745/735- 727/715 BCE) through Hezekiah (727/715-698/687 BCE), or roughly, a fifty-year period.<sup>13</sup> Haran saw ideological similarities between the descriptions of Josiah's reform and Deuteronomy's laws. He admits the textual information for Hezekiah's reform is scanty, but argues that the "extreme and uncompromising" nature of Josiah's reform demonstrates the mildness of Hezekiah's reform.<sup>14</sup> Haran's primary argument, however, concerns the depiction of rituals, which he takes to be consonant with other Near Eastern rites, but symbolically imbued with a non-anthropomorphic conceptualization of the deity. He argues that, post-exile, there would be no need to recollect this type of cultic institution.<sup>15</sup>

Against these voices,<sup>16</sup> Wellhausen's theory of a post-exilic date for P remained the consensus until another Israeli scholar, Israel Knohl, broached the idea of an early date with

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<sup>11</sup> Kaufmann, 175f. Kaufmann does not directly take up Wellhausen in a point by point argument here, but Wellhausen found that P's silence on centralization meant that its creators took centralization "for granted." See Menahem Haran, *Temples and Temple-Service in Ancient Israel: An Inquiry into the Character of Cult Phenomena and the Historical Setting of the Priestly School* (Oxford: Clarendon Press, 1977), 144, n.15.

<sup>12</sup> Kaufmann, 172, 209.

<sup>13</sup> The data is inconsistent for both of these monarchs' reigns.

<sup>14</sup> Haran, *Temples and Temple-Service*, 139.

<sup>15</sup> Haran, 225.

<sup>16</sup> And others, see Knohl, *The Sanctuary of Silence*, 4-5, for a number of other scholars.

Jacob Milgrom. A doctoral student at Hebrew University in the 1990's, Knohl recognized that the Holiness material and the Priestly material were the works of two distinct Priestly schools. Using textual analysis, he asserts that the Priestly Torah is the earliest of the two, the Holiness School ultimately having redacted the final Priestly material. He agrees with Haran that the Holiness School has its beginnings in the era of Ahaz and Hezekiah, although, unlike Haran, he shows that the school was active until the return from the Exile.<sup>17</sup> Milgrom agrees that the Holiness School can be dated to this period, and asserts that since H is the "*terminus ad quem*" of P, the texts of P were written no later than 750 BCE.<sup>18</sup> Although he rejects Knohl's thesis that H ends in the early Persian period, Milgrom postulates that the last layer of H, Leviticus 23, was composed in Babylonia in order to preserve the cultic calendar.<sup>19</sup>

In order to establish a pre-exilic date, Milgrom shows how the words of the later H still fit within the context of regional sanctuaries by matching the texts with archaeology. He begins with the Priestly narrative, Josh18: 1 and 19: 51, that chronicles the establishment of the Tent of Meeting at Shiloh. There is no building to house it at this juncture, although by Samuel's birth, there is. Just because Shiloh was a central sanctuary, however, does not mean that it was the only legitimate sanctuary.<sup>20</sup> Meanwhile, Milgrom notes a number of biblical citations that attest to regional sanctuaries—Bethel, Shechem, Shiloh, Gilgal, and Beer Sheba—and archaeological

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<sup>17</sup> Knohl, 200-1.

<sup>18</sup> Jacob Milgrom, *Leviticus 1-16*, vol. 3, The Anchor Bible (New York: Doubleday, 1991), 28.

<sup>19</sup> Milgrom, *Lev 1-16*, 27; Jacob Milgrom, *Leviticus 23 - 27* (AB 3B; New Haven: Yale University Press, 2010), 2055.

<sup>20</sup> Milgrom, *Leviticus 1-16*, 32; Joseph Blenkinsopp argues against Kaufmann's pre-exilic date (despite Milgrom's more recent work, published in 1991). Blenkinsopp argues that P knows a central sanctuary. Milgrom would agree, only correcting it to Shiloh. Joseph Blenkinsopp, "An Assessment of the Alleged Pre-Exilic Date of the Priestly Material in the Pentateuch," *Zeitschrift Fur Die Alttestamentliche Wissenschaft* 108, no. 4 (1996): 499; Blenkinsopp's prooftext, Deut 12:15, Marvin Sweeney posits as a counter to earlier laws in Exodus and Numbers, making it probable that this section of Deuteronomy was composed to support King Josiah's reforms. Marvin A. Sweeney, *King Josiah of Judah: The Lost Messiah of Israel* (Oxford ; New York: Oxford University Press, 2001), 139.

evidence for cult sites at Dan, Arad Megiddo, Lachish, Gezer, Shechem, Tell Beit-Mirsim, Tell Qadesh, and Beer-Sheba.<sup>21</sup> The Holiness stratum, at Num 5:3, recognizes this situation when it reports the speech of YHWH: את מחניהם אשר אני שכן בתוכם ... The Hebrew for “camp” is plural, and Adonai dwells within “them.” Milgrom observes that the Holiness writer, by putting these words in the deity’s mouth, affirms the legitimacy of multiple, de-centralized, worship sites.<sup>22</sup>

Next, Milgrom notes the shift in slaughter protocol that H introduces, which he not only situates within the regional sanctuary setting, but claims that such a rule could only be feasible if local sanctuaries were available. In Lev 17: 3-7, an H stratum,<sup>23</sup> Israelites are told that the “sacrifices that they have been making in the open” must be brought “to the Lord, to the priest at the Tent of Meeting” (17:5). Further, the instructions are given so that their sacrifices will no longer be “to the goat demons/satyr” (17:7). Milgrom cites work by Y. M. Grintz that postulates that this prohibition is against chthonic worship,<sup>24</sup> which occurred (or could occur) when people slaughtered animals for food in the open field, and which allowed the blood to drain into the earth. Knohl wants to use these verses as proof that the Holiness Code advocated centralized worship.<sup>25</sup> Milgrom dismisses the idea that this verse provides that evidence, arguing that the Tent of Meeting is the prototype of the tabernacle within a regional sanctuary setting.<sup>26</sup>

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<sup>21</sup> Jacob Milgrom, *Leviticus 17 - 22* (AB 3A; New Haven: Yale University Press, 2008), 1505.

<sup>22</sup> Erhard Blum argues against this interpretation of the plurality. He also challenges the conclusion that the presence of multiple sanctuaries is evidence that they were recognized as legitimate, and indeed, argues that it is the P view that they are not. Erhard Blum, “Issues and Problems in the Contemporary Debate Regarding the Priestly Writings,” in *The Strata of the Priestly Writings* (Zurich: Theologischer Verlag Zurich, 2009), 32-3.

<sup>23</sup> Both Milgrom and Knohl agree that Lev 17: 3-7 is H. Milgrom also says that Lev 3:16b, which says that all suet belong to the Lord, is also an H stratum inserted into P. Knohl disagrees on this point. Milgrom, *Leviticus 1-16*, 28; Knohl, *The Sanctuary of Silence*, 50.

<sup>24</sup> Milgrom, *Leviticus 1-16*, 28.

<sup>25</sup> See Knohl, *The Sanctuary of Silence*, 22. For a counter reading, see Joseph Blenkinsopp, “An Assessment of the Alleged Pre-Exilic Date of the Priestly Material in the Pentateuch,” *Zeitschrift Fur Die Alttestamentliche Wissenschaft* 108, no. 4 (1960): 500-1, and Milgrom's response in Milgrom, *Leviticus 17 - 22*, 1504.

<sup>26</sup> Milgrom, *Leviticus 17 - 22*, 1454-5; David Carr, in discussing this passage, understands a centralized sanctuary in Jerusalem. David McLain Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011), 299, n. 98.

Instead, what strikes him here is the interest in establishing that all slaughter, even for personal consumption, occur at a sanctuary. Milgrom traces a discomfort with animal slaughter throughout the Priestly literature, beginning with the ideal, vegetarian, Adam, and followed by a proscribed acquiescence to Noah: humans may eat meat, but not the blood of the animal.<sup>27</sup> The Holiness corpus, as the final redaction of P, takes this further, prohibiting common slaughter and requiring that the flesh be offered as a שלם or well-being offering, before consumption.<sup>28</sup> David M. Carr makes an interesting point in this regard, seeing the Holiness Code as “re-signifying” meat as a gift.<sup>29</sup>

By postulating this ideological arc, Milgrom aligns with Kaufmann, who, as was noted above, claims that the mentality behind Leviticus 17 is the division between sanctified precincts and everywhere else.<sup>30</sup> This proposed mentality contrasts with that of Knohl, who claims that the Holiness School expanded the sacred realm through the purity laws.<sup>31</sup> He uses Numbers 5:5-8 as an example of this, asserting that they are Holiness verses, and that they held the community to a higher level of purity. These issues will be seen to be interwoven with repairing wrong.

Ziony Zevit also agrees with Kaufmann. He follows textual evidence that attests to a decline in the allocation of tithes to Levites in Biblical, Apocryphal, and Rabbinic sources as a

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<sup>27</sup> Jacob Milgrom, “A Prolegomenon to Leviticus 17:11,” *Journal of Biblical Literature* 90, no. 2 (June 1971): 156. Also see William Gilders' study of P's vegetarian stance in Genesis. He posits that the tabernacle and its priesthood is a vital precondition for sacrifice in P. William Gilder, “Sacrifice before Sinai and the Priestly Narratives,” in *The Strata of the Priestly Writings*, ed. Sarah Shectman and Joel S. Baden (Zurich: Theologischer Verlag Zurich, 2009), 57–72.

<sup>28</sup> Milgrom, *Leviticus 1-16*, 29.

<sup>29</sup> Carr, *The Formation of the Hebrew Bible*, 299, n. 98.

<sup>30</sup> Kaufmann, *The Religion of Israel*, 182..

<sup>31</sup> Knohl, *The Sanctuary of Silence*, 185. Milgrom also describes a sacred precinct that extends beyond the sanctuary in the Holiness source. The difference here may be that Milgrom is analyzing the wilderness setting, which he claims consists of earlier traditions. This is not to be confused with Holiness redactors, who worked with Priestly material and Holiness material. For Milgrom's study of word choice during the wilderness accounts versus accounts of settlement in the land, see Milgrom, *Numbers: The Traditional Hebrew Text with the New JPS Translation*, 336. For the the sphere of the holy, see Jacob Milgrom, “Encroaching on the Sacred: Purity and Polity in Numbers 1-10,” *Interpretation* 51, no. 3 (1997): 242.

contrast to pre-exilic tithe laws in Numbers 18. The legal shift in place by the return, he notes, like Milgrom, had its origin in the closing of the regional sanctuaries (*bimot*), as expressed in Dt 14: 22-26 and 26: 12-15.<sup>32</sup>

In contrast to Milgrom, several scholars make the case that the Priestly corpus was an exilic production. David Wright, one of Milgrom's students, has come to see the Priestly corpus, including the Holiness Code, as finally redacted in the Exile. Wright envisions a three-part PH document: Lev 1—5 is part of P's core, which reveals details on building the tabernacle and, in Lev 1—5, sacrificial regulations; the Holiness Code (Lev 17—26) expanded legislation beyond cultic matters; and lastly, a wilderness section. In this conception, scribes composed, but also refined their colleagues' previous work, in a process Wright calls "inner-compositional development." Along with Knohl, Wright sees the Holiness scribes as completing the work of the Priestly scribes. Wright dates this activity to the Exile, possibly begun just prior to it, with the H material stemming from the late exile to early postexile. He reaches these dates through comparing the PH material with non-P narrative and law, Deuteronomy, and Ezekiel.<sup>33</sup>

David Carr is also convinced that the Priestly corpus is an exilic production. Carr thinks about how the ancient world memorized written texts for oral performance and adaptation. In particular, he documents the small syntactic changes that occurred in the transmission of texts in adjacent Near Eastern and compares these patterns to versions of the similar accounts in the Israelite corpus.<sup>34</sup> These studies reveal cognitive shifts that likely only an orally transmitted

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<sup>32</sup> Ziony Zevit, "Converging Lines of Evidence Bearing on the Date of P," *Zeitschrift Fur Die Alttestamentliche Wissenschaft* 94, no. 3 (1982): 488, 492.

<sup>33</sup> Wright inserts this thesis, and its development, in a lengthy footnote to his article on two flood stories within Genesis. David Wright, "Profane Versus Sacrificial Slaughter: The Priestly Recasting of the Yahwist Flood Story," in *Current Issues in Priestly and Related Literature: The Legacy of Jacob Milgrom and Beyond*, ed. Roy Gane and Ada Taggar-Cohen (Atlanta: SBL Press, 2015), 143, n. 37.

<sup>34</sup> For example, he references the work of the linguist Tamar Zewi, who studied variations between the Masoretic text (MT) of Samuel-Kings with that of MT Chronicles. Carr, *The Formation of the Hebrew Bible*, 58f.

account would make. The milieu of learning written texts, performing them, and transcribing was still active in the time of the tannaim, as Martin Jaffee has reconstructed it, and as I have described in my introduction. For Carr, this reality means that early traditions—and he classifies Leviticus 1—7 as early—lie behind the “original P.”<sup>35</sup> He sees the later P as sometimes built out of a Priestly “pre-history” and sometimes “in pointed opposition to the emergence of the post-D Hexateuch.”<sup>36</sup> Lev 1—7 falls within the former category.

Carr proposes that repeating traditions served the Israelites in Babylonia to maintain identity. Moreover, the focus in the Priestly tradition on land is consonant with modern (twentieth and twenty-first century) diaspora experiences.<sup>37</sup> Leviticus’ wilderness setting could be read nostalgically in this regard. Carr thus dates the Priestly material to the Exile since its themes mirror the themes found amongst observable populations. Interestingly, Carr cites anthropologist John C. Knudson’s conclusion that displaced people frequently understand themselves through their past positions, so that “who they are” is negotiated through managing the memories of “who they were.”<sup>38</sup> Thinking about storytelling in this way would seem to be a contradiction to the more communal concerns expressed in notions of pollution and the offense to the divine presence with which the texts are occupied. The idea that a group is thinking by way of past values, however, merits serious consideration. If scribes in exile reviewed the wilderness experiences of the past to somehow think about the present, then this process might parallel rabbinic reconstructions of Temple activity after its destruction.

What I have attempted here is to trace the theories that have developed a setting for Lev 5: 20-6 and Num 5: 5-8. The major disjunctures are around whether the text knew of one,

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<sup>35</sup> Carr, *The Formation of the Hebrew Bible*, 295.

<sup>36</sup> Carr, 294.

<sup>37</sup> Carr, 253 and 296.

<sup>38</sup> Carr, 253.

centralized sanctuary, or multiple regional sanctuaries; whether the community located holiness within itself, or conceived of a special holiness within the precincts of the tabernacle; and finally, whether the views of sin and pollution, payment and sacrifice, represent a community establishing its identity or were more ominously expressing concerns that human action can cause the divine presence to depart. The next section will begin by examining the terms in the texts in order to seek intent behind the setting.

### C. Leviticus 5: 20-6: Prolegomena to Mishnah Yoma 8

The fifth chapter of Leviticus offers an innovative view of harm. It lists certain misdeeds, then requires repayment of the victim before bringing a sacrifice. The sacrifice is also not the one for the deliberate sins listed, but has been “downgraded” to one required of an inadvertent offense. Here’s the text of the relevant verses.

**20** And LORD spoke to Moses saying: **21** a person who **הטא** and commits a sacrilege against LORD and deceives his fellow with a deposit or loan/pledge, or by robbery or defrauding his fellow **22** or finds a lost item and denies it, taking an oath on the lie, and swears falsely about it: from every one [of these] that a person does, she or he **הטא**. **23** When a person **הטא** and [feels] guilt and returns the item which he stole or the extortion which he extorted or the deposit which was deposited with him or the lost item that he found, **24** or from everything that he swore falsely about: he shall repay the principle and add a fifth to it, which he will give on the day [that he realizes] his guilt. **25** And the guilty one will bring to LORD daily offering of a ram from the flock or the equivalent for a reparation offering to the priest. **26** The priest makes expiation of it to LORD and he shall be forgiven for everything that he did that had guilt in it.

ודבר יהוה אל-משה לאמר: נפש כי **תחטא** ומעלה מעל ביהוה וכחש בעמיתו בפקדון או-בתשומת יד או בגזל או עשק את עמיתו או-מצא אבדה וכחש בה ונשבע על-שקר על-אחת מכל אשר-יעשה האדם **לחטא** בהנה: והיה כי-**יהטא** ואשם והשיב את-הגזלה אשר גזל או את-העשק אשר עשק או את-הפקדון או את-הפקדון אשר הפקד אתו או את-האבדה אשר מצא: או מכל אשר-ישבע עליו לשקר ושלם אתו בראשו וחמשתיו יסף עליו לאשר הוא לו יתננו ביום אשמתו: ואת-אשמו יביא ליהוה איל תמים מן-הצאן בערךך לאשם אל-הכהן: הכפר עליו הכהן לפני יהוה ונסלח לו על-אחת הכל אשר-יעשה לאשמה בה:

Again, I have left verb חטא untranslated. In the first instance, line 21, the verb is paired with the sacrilege offense, מעל מעל. Rolf Knierim also posits “to infringe” for חטא, which characterizes sacrilege.<sup>39</sup> The third instance of חטא pairs it with guilt, אשם, as a cause and effect relationship. These two uses of the term provide a cultural context for how the commonly translated “sin” was understood.

Knierim has made the case that “sin,” as we understand the term, can only be interpreted “at most in the terms בדר and פדר.”<sup>40</sup> Knierim’s 1966 article is an early voice for defining words contextually, an argument famously taken up by James Barr in 1983, and more recently, by Joseph Lam and David Lambert.<sup>41</sup> Lambert, whose article does not discuss sin, takes up the issue of how certain translations impose a subjective interiority that belies the context the literature establishes.

Lambert cites V. N. Voloshinov, whose description of psyche as a border that exists between the organism and the outside world, as a model for how to read biblical words that seem, to the modern eye, to express an inner self. Lambert faults translators who interpret the Hebrew to show biblical characters acting from an inner conscious when the language indicates an objectified action. One example that he gives is how Psalm 44: 21-22 characterizes God:

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<sup>39</sup> Knierim, “Review: The Problem of an Old Testament Hamartiology. Considerations to the Book of Stefan Porubcan, ‘Sin in the Old Testament: A Soteriological Study,’” *VT* 16 (1966),” 368.

<sup>40</sup> Knierim.

<sup>41</sup> James Barr, “Limitations of Etymology as a Lexicographical Instrument in Biblical Hebrew,” *Transactions of the Philological Society* 81, no. 1 (1983): 41–65; Joseph Lam, “On the Etymology of Biblical Hebrew חטא: A Contribution to the ‘Sin Offering’ vs. ‘Purification Offering’ Debate,” *Journal of Semitic Studies* 65, no. 2 (2020), 328; David A. Lambert, “Refreshing Philology: James Barr, Supersessionism, and the State of Biblical Words,” *Biblical Interpretation* 24 (2016): 332–56.

21 אם שכחנו שם אלוהנו

ונפרש כפינו לאל זר

22 האל אלוהים יחקר הזואת

כי הוא ידע תעלמות לב

Lambert says that the NJPS translation of ידע as “know” enables the modern reader to interpret a psychological reach into the mind, whereas the יחקר of the first half of the verse, “seeking out” suggests that God’s knowledge is formed by tests and encounters.<sup>42</sup> Lambert doesn’t give a direct translation, and retaining the poetic expression becomes harder. A possible compromise is: “If we should forget the name of our God and spread our hands to a strange god, God will test this and discover the secrets of the heart.”

As noted in the Introduction, Christopher Gill has also observed the person-in-the-world portrayals of ancient literature. It will be recalled that he created two models of thought processes: the subjective-individualist and the objective-participant. In the first, literary characters are depicted as autonomous in establishing moral principles for themselves, with a concurrent sense of freedom.<sup>43</sup> In the second, characters are depicted engaging in interpersonal and communal relations where the proper goals for life are debated.<sup>44</sup> His assessment of numerous characterizations in antique and late antique writings is that the second model, where perception is objectified and discussed within communities, is the rule.

The insights of both Lambert and Gill can help us fit חטא within its cultural setting. Gill’s models regarding a proper life certainly resonates with rabbinic discussions, but Leviticus,

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<sup>42</sup> Lambert, “Refreshing Philology,” 345.

<sup>43</sup> Christopher Gill, *Personality in Greek Epic, Tragedy, and Philosophy: The Self in Dialogue* (Oxford: Clarendon Press, 1995), 11.

<sup>44</sup> Gill, 12.

too, depicts standards for interpersonal relations. By extension, individuals who act outside of these standards, “miss the mark.”

חטא is frequently paired with נשא, and Baruch Schwartz has posited that the phrase means “hold up, haul about, carry sin.”<sup>45</sup> Further, he says the phrase means this, whether speaking of a transgression or the guilty party’s release from guilt. Joseph Lam has challenged this reading, claiming, especially, that the metaphor is lexicalized when speaking of the carrying off of the burden, rendering a new meaning, “to forgive.”<sup>46</sup> While Lam acknowledges that the language surrounding חטא throughout the literature embeds a meaning of the act of sin as somehow with object-like properties, he maintains that the metaphor functions to unify both the status of the sinner and “the inchoate experiential aspects of a consciousness of sin.”<sup>47</sup>

Schwartz, on the other hand, while also characterizing נשא חטא as a metaphor, advocates for keeping the metaphor alive. He maintains that the objective status provided by the metaphor indicates that this culture understood that offenses have a metaphysical existence.<sup>48</sup> In particular, the bearing away of the חטא from the Sanctuary on Yom Kippur finishes the task begun when the first goat’s blood is applied to the altar.

Schwartz proposes that the language of Lev 10:17 helps us to distinguish between the terms חטא, עון, and פשע. After the disobedience of Nadab and Abihu, and the subsequent חטאת, Moses asks why the sacrificial goat had not been eaten, נתן לכם לשאת את עון העדה לכפר עליהם לפני, “he [God] gave to you to bear the transgression of the community ‘to purge’ [them] on

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<sup>45</sup> Baruch Schwartz, “The Bearing of Sin in the Priestly Literature,” in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*, ed. David Wright, David Noel Freedman, and Avi Hurvitz (Winona Lake, IN: Eisenbrauns, 1995), 9.

<sup>46</sup> He defines lexicalization as a metaphor that is now in its own domain, disconnected from the original meaning of the words. Joseph Lam, *Patterns of Sin in the Hebrew Bible: Metaphor, Culture, and the Making of a Religious Concept* (New York: Oxford University Press, 2016), 8, 25.

<sup>47</sup> Lam, 86.

<sup>48</sup> Schwartz, “The Bearing of Sin,” 15.

behalf of YHWH.”<sup>49</sup> Schwartz sees that the נשא here describes the ritual act: the חטאת itself carries away the עון. Thus, he concludes that נשא עון is another name for כפר.<sup>50</sup> At to Lev 16:18-19, the High Priest כפר the altar by sprinkling it with the blood of the ox and the goat, purifying (טהר) the altar and sanctifying it. The כפר act removes the transgressions, and the Azazel goat carries them into the wilderness. Schwartz and Nobuyoshi Kiuchi agree that the חטאת consists of two parts, the purging of the shrine and the carrying off of the accumulated sins to the wilderness.<sup>51</sup> The High Priest brings the sins from the sanctuary and places them on the head of the second goat. This act will be amplified in Mishnah Yoma.

The laying on of hands transfers כל פשעיהם לכל חטאתם. Schwartz translates this as “all of the wanton sins of the Israelites and only the deliberate offenses among all their sins,” reading a genitive for the *lamed*. In this reading, since a חטא can be either inadvertent or deliberate, only the deliberate of these, further defined as wanton, are carried away. Impurities, inadvertent and deliberate sins, all retain some objective quality. The inadvertent sins are washed by blood in the Sanctuary, while deliberate sins require transportation out of the Sanctuary and into the wilderness.<sup>52</sup>

Leviticus 5:20-6 lists five deliberate sins or חטאות (deceit<sup>53</sup> in the matter of a deposit or pledge; robbery<sup>54</sup>; extortion; denying that something is found; and swearing falsely) under the rubric of sacrilege or מעל מעל.<sup>55</sup> These acts are separated from a list of those that are inadvertent

<sup>49</sup> Schwartz follows Ibn Ezra by interpreting כפר as purge. Schwartz, 16.

<sup>50</sup> Schwartz.

<sup>51</sup> Both note dissent from this view. Schwartz, 17; Nobuyoshi Kiuchi, *The Purification Offering in the Priestly Literature: Its Meaning and Function* (Worcester: Sheffield Academic Press, 1987), 148.

<sup>52</sup> Schwartz, “The Bearing of Sin,” 18-19.

<sup>53</sup> כחש in Hebrew means to deny or deceive (line 21 and line 22). ונשבע על-שקר means a false oath (line 22).

<sup>54</sup> גזל or robbery is an act done by force. עשק also means robbery, extortion, or exploitation.

<sup>55</sup> The term מעל מעל is used when an אשם/reparation offering is necessary. Jacob Milgrom and Baruch Levine translate the term as sacrilege, based on its contexts. Milgrom notes two categories of מעל, “sacrilege against sancta

in chapter four. The Lev 5 sins are moral transgressions, understood in this literature to have a separate effect from ritual transgressions (such as being in contact with a corpse).<sup>56</sup> The biblical text's list of crimes excludes any mention of the harm done to the victims, although it carefully prefaces the list as "trespasses against YHWH," and ends by doubling the offence against the deity by adding a false oath as the response to an accusation of transgression. The text, however, goes on to provide a path forward: guilt, restore the goods or repay the value to the owner, and an added penalty of one fifth of their value. Finally, the perpetrator is to make a sacrifice of a valuable animal, a ram without blemish, or its equivalent. Forgiveness, נסלח, is given at the completion of these steps.

A second term that is bracketed above is אשם. Jacob Milgrom has translated אשם as "feel guilt." He claims a psychological component here that David Lambert challenges.<sup>57</sup> Lambert is rightly concerned that modern readers frequently interpret concepts unilaterally, without considering how the cultural is uniquely defining it.<sup>58</sup> He notes that Milgrom couples the אשם of Lev: 23 with the והתודו of Num 5: 7 to create a priestly doctrine of repentance.<sup>59</sup> While Milgrom may be pressing the text too far, Lambert argues that this trajectory begins by the unwarranted injecting of "feeling" into the turn from deliberate sin to some form of compensation. This translation is, he claims, reading subjectivity into the text. In contrast to Milgrom, he reads stories such as Joseph and his brothers as stories that utilize the literary device of guilt and confession to portray a power shift: the victim, entitled to compensation by divine

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and sacrilege involving oaths. Jacob Milgrom, *Leviticus 1-16* (AB 3; New York: Doubleday, 1991), 320; Baruch A. Levine, *Leviticus*, The JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1989), 30.

<sup>56</sup>See Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000).

<sup>57</sup> Milgrom, *Leviticus 1-16*, 1991, 373-8. Milgrom, *Leviticus 1-16*, 342-4; See also the first chapter of Jacob Milgrom, *Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* (Leiden: Brill, 1976).

<sup>58</sup> David A. Lambert, *How Repentance Became Biblical: Judaism, Christianity, and the Interpretation of Scripture* (New York: Oxford University Press, 2016), 8.

<sup>59</sup> Lambert, 59.

decree, places the victimizer in the position of submission. Lambert understands the characters' declarations of guilt, not as an interior reflection, but outward recognition that covenantal transgression rebounds in suffering.<sup>60</sup> Milgrom, too, explores these themes. He points to a number of texts where the same language describes "emotional" and "physical suffering": Jer 17:14; Pss 38:2-11, 18-19; 102; 149:3.<sup>61</sup> Citing other texts, he notes that phenomena such as anger or iniquities are often depicted as coming from outside to afflict the body, even when the cause comes from the same individual's actions. He therefore concludes that אָשַׁם without an object has a consequential meaning.<sup>62</sup> In other words, in Lev 5: 23, it is the action, חָטָא, that causes the person to "feel" guilt, much like a gun backfiring causes that person to feel hurt, even as the transgression travels to the Sanctuary. Milgrom, however, seems to reverse himself when he attributes "feel" to an emotional state, rather than the physical hit of pain that transgressions cause. As we will see in a bit, Milgrom's larger thesis attributes a miasmic force to transgressions, very much in line with the idea here, that the transgressor will feel, not internally, but externally.

Verse 23 contains three verbs that together create a staccato rhythm: וְהָיָה כִּי יִחַטֵּא וְאָשַׁם וְהָשִׁיב (if he should sin, and feel his guilt, and return). This line is the pivotal line that divides an enumeration of sins from the remedies for the transgressions. The *asham* offering in line 25 is connected, not to the civil crimes, but to the oath violation, since a sacrifice is required for a מַעַל מעל or sacrilege offence.<sup>63</sup> If one compares the crimes of Lev 5:20-26 to the purely ethical

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<sup>60</sup> Lambert, 56-7.

<sup>61</sup> Milgrom, 342. Just as inexplicable suffering was attributed to sin in the Israelite world, therefore eliciting guilt, in the Greek world, Dodds notes that "departures from normal human behavior" were ascribed to supernatural agency since the Homeric poets were "without the refinements of language" to describe a psychological phenomenon. What he doesn't acknowledge here is that the Greek conception of what we call 'personality' was different. E. R Dodds, *The Greeks and the Irrational* (Berkeley: University of California Press, 2004), 13-14.

<sup>62</sup> Milgrom, *Leviticus 1-16*, 1991, 342-3.

<sup>63</sup> Milgrom uses later interpreters, as witnessed in Qumran scrolls (1QS 8:23) and t.Yoma 4:9, to posit that the confession found in Num 5:7, linked to Lev 5:23, is the operative force in downgrading the required sacrifice for an

transgressions of Lev 19:11-13, Leviticus 5 is the only one that requires an interpersonal repair. This makes Lev 5: 20-26 groundbreaking. Indeed, the linkage of human law transgressions with divine law transgressions is a cosmological interplay that will act as a thread from the biblical corpus through to the rabbinic writings.

The list of transgressions is remarkable for its focus on speech acts. It proscribes deceit and lies, and discusses oaths and the false oath. The return or payment implies some sort of verbal interaction with the victim. Numbers 5:7, which is part of a section (vv 5-8) that echoes Leviticus, adds that he will confess, וְהִתוּדָה, another verbalization.<sup>64</sup> The other crimes—robbery, extortion and fraud—operate on some level of deception, as well as violence. The entire list links transgression and sacrilege to crimes between individuals, so that harming a fellow human is associated with desecration of God, the protective force that binds the community. Some commentators, have discounted the hint of interpersonal repair in this section, claiming that the sacrifice ultimately positions the text religiously, in the human-divine covenant.<sup>65</sup> I would argue, however, that it is possible to use the trajectory of the text—act, lie, false oath, guilt, confession, and repayment—as a way to consider Leviticus’ prescriptions as a contribution to legal philosophy, where values that contribute to a community are considered.

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oath violation from a חֲטָאת to an אָשָׁם. While these later interpreters may well have carried a “language” of sacrifice tradition into their writing, I am not sure we can make this assessment retroactively into Lev 5. Milgrom, *Leviticus 1-16*, 369.

<sup>64</sup>Lieberman notes that while it is common to translate וְהִתוּדָה as confession, the Septuagint translation is ἐξαγορεύει or declaration—a decidedly verbal term. Saul Lieberman, “Hellenism in Jewish Palestine,” in *Greek in Jewish Palestine/Hellenism in Jewish Palestine* (New York: The Jewish Theological Seminary of America, 1994), 140, n. 111.

<sup>65</sup> See Konstan and Griswold. My forthcoming article presents an in-depth challenge to their position. David Konstan, *Before Forgiveness: The Origins of a Moral Idea* (Cambridge: Cambridge University Press, 2010); Charles L. Griswold, *Forgiveness: A Philosophical Exploration* (New York: Cambridge University Press, 2007). Sophia Avants, “The Impact of Crime on Communities: A Conversation between Biblical and Rabbinic Sources,” in *Troubling Topics, Sacred Texts*, ed. by Roberta Sabbath (Berlin: De Gruyter, projected 2022).

#### D. Pinhas as Prolegomena to Leviticus

Purification rituals were prevalent in many Near Eastern cults, and there is debate as to whether the same understanding of a concrete pollution existed in Israelite communities.<sup>66</sup> The archaeology, however, would collaborate the real events of plagues with biblical narrative descriptions of their cause. Archaeological finds, along with the surviving texts from the Near East, describe sweeping plagues of disease during the Late Bronze Age, which corresponds to the settlement of the hill country area of what would later be described as the Northern Kingdom, or Israel.<sup>67</sup> It was in this region, Marvin Sweeney maintains, that traditions that eventually would be shaped into the biblical “E” or “Ephraimite” source, began to circulate.<sup>68</sup> These narratives include the Jacob cycle, the exodus, and wilderness traditions. Wilderness settings in the book of Numbers derive from the traditions of peoples whose populations were devastated by disease.<sup>69</sup> Thus, a story like the Baal Peor narrative, found in Numbers 25, has, at its core, the report that thousands of people died of a plague. Numbers 31:17-20 further reports a divine directive to slay the women who had had sexual relations with the men of the town, along with

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<sup>66</sup> See Noam’s article for an extensive review of the positions within the Academy. Klawans argues for taking the Israelite sources at their word, as opposed to assuming that what is meant is the symbolic plane. Milgrom points to Near Eastern evidence as parallel phenomena. Vered Noam, “Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives,” *Journal of Ancient Judaism* 1, no. 1 (May 2010): 65–103; Klawans, *Impurity and Sin in Ancient Judaism*, 34; Jacob Milgrom, “Israel’s Sanctuary: The Priestly ‘Picture of Dorian Gray,’” in *Studies in Cultic Theology and Terminology* (Leiden: E. J. Brill, 1983), 77.

<sup>67</sup> Carol L. Meyers, *Discovering Eve: Ancient Israelite Women in Context* (New York: Oxford University Press, 1988), 52.

<sup>68</sup> Sweeney, along with other scholars, now define the “E” source as more accurately representing Northern (Israelite) material, in distinction from the reworked material “J” source, originating in the South (Judea). Schwartz follows Alexander Rofe, who has established criteria to distinguish the Ephraimite from Elohist in the E strata. Marvin A. Sweeney, “Hosea’s Reading of Pentateuchal Narratives: A Window for a Foundational E Stratum,” in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Christian Gertz et al. (Tübingen: Mohr Siebeck, 2016), 863; Baruch Schwartz, “The Pentateuchal Sources and the Former Prophets: A Neo-Documentarian’s Perspective,” in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Christian Gertz et al. (Tübingen: Mohr Siebeck, 2016), 789, n. 22.

<sup>69</sup> Meyers points to Numbers 11:1-3; Numbers 14:11; Numbers 16; Numbers 21:6; and Numbers 25. Meyers, *Discovering Eve*, 67 and 69.

the male offspring of such women, and an order to clean and burn objects that would have become impure. The women singled out were supposedly instigators of the apostasy, but in fact they would be carriers of disease if they were in contact with husbands who had been exposed to the plague. Numbers 31 gives us a window into the remedies these societies found effective in stopping contagion.<sup>70</sup>

Sweeney points out that the “J” or “Judean” redactor later inserts material into the E strata that privileges the role of the Aaronide priests and Levites.<sup>71</sup> In the Baal Peor narrative, for example, the actions of Pinhas stops the plague from reaching the sanctuary. But what is this situation? Ostensibly, Moses has camped the Israelites at Shittim (Num 25:1), in their journey towards the promised land. The tabernacle, over which the cloud of divine presence hovers, has been set up within the Tent of Meeting. Meanwhile, Moabite women who worshipped the god, Baal, of Peor, enticed Israelite men into sacrificing to their Baal, in rituals that included sex, food, and drink—incensing YHWH.

Jonathan Klawans identifies three categories of sins in the Hebrew bible that constitute moral impurity: idol worship, incest, and murder.<sup>72</sup> These transgressions are not contagious (like ritual impurities), but defile the sinner, the land, and the sanctuary. At the level of the

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<sup>70</sup> Meyers.

<sup>71</sup> This view stands in contrast to Jacob Milgrom, who argues that Numbers 25, for instance, originates from the “P” or Priestly source. While both Sweeney and Milgrom would date the material (not the text), from roughly the same, pre-exilic, time period, Milgrom finds the material to originate in the rituals at the central sanctuary at Shiloh, but re-worked by pre-Hezekian priests at the Jerusalem Temple, whereas Sweeney leans towards theories that relate the material to the reforms of Hezekiah and Josiah. Avraham Faust uses archaeological evidence to locate the Priestly writings, including the Holiness School, in the late Iron Age (i.e. pre-exile). Both Sweeney and Faust provide reviews of the current debates. Sweeney, *The Pentateuch* (Nashville: Abingdon Press, 2017), 54; Jacob Milgrom, *Numbers: The Traditional Hebrew Text with the New JPS Translation*, The JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1990); Milgrom, *Leviticus 1-16*, 27-33; Avraham Faust, “The World of P: The Material Realm of Priestly Writings,” *Vetus Testamentum* 69 (2019), 202.

<sup>72</sup> Klawans develops this idea throughout his book, but lays out his sources in the first chapter. Klawans, *Impurity and Sin in Ancient Judaism*, 26-31.

Priestly strata, these sins require the sanctuary to be purged through the purificatory offering/הטאת, but at this level of composition, the offenders themselves are sacrificed. Idolatry, in its essence, is an oath violation.<sup>73</sup> The Exodus account of the covenant established at Mt. Sinai commanded the exclusive worship of YHWH (Ex 22:19), a command that was acclaimed by the people (Ex 24:3). This oath forms the covenant between God and Israel. Exodus 22:19 rules that worshipping other gods extinguishes/חרם: in other words, it is an offense that God punishes by death.

Oaths are commissive illocutionary forces. They promise a future course of action, in this case by saying “all the things that the LORD has commanded we will do!” The linguist John Searle notes that commissive illocutions are undertakings, so when the intent is not actively followed, a person effectively refuses the speech act.<sup>74</sup> The deliberate refusal of the oath is the narrator’s explanation of the pestilence that struck the encampment. In the narrator’s world view, this is a refusal of fidelity to YHWH. A later layer to this narrative extends the realm of the sacred from YHWH to the place where YHWH dwells: the tabernacle or sanctum. Thus, we see that transgressions such as oath violations also have the power to encroach upon the sacred dwelling, arousing the wrath of the deity.

Traditions that pre-date the Exile point to a world-view where the deity was described as a cloud-like Presence that filled the tabernacle when it was stationary, and hovered over it when the community traveled. Since the texts speak of moral transgressions as threatening this Presence, one can assume that Israelite faithfulness to the Covenant kept the Presence in a sort of wholeness. The cloud, ephemeral, but with a certain substance, is matched by the force of

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<sup>73</sup> Jacob Milgrom, *Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* (Leiden: Brill, 1976), 21.

<sup>74</sup> John Searle and Daniel Vanderveken, *Foundations of Illocutionary Logic* (Cambridge: Cambridge University Press, 1985), 55 and 195.

inadvertent and deliberate transgression. While transgressions are formless in biblical description, they are given a force that travels from the human generator to the sanctuary. The resultant defilement of the sinner, the land, and the sanctuary is substantial.<sup>75</sup> This force has the power to kindle divine wrath or plague (קצף/נגף), destroying innocent and guilty alike, or spitting them out of the land.<sup>76</sup> Pinhas, in his role of Levitical guard, stops this force from destroying the innocent. Keeping the sense of balance described above, where implicit goodness is matched by Presence and transgression is matched by anger, Numbers 25:11 reports God as saying “with his anger [he turned] my anger” (בִּקְצָפוֹ אֶת קִנְאוֹתִי).<sup>77</sup> The scribe’s positioning of the words gives further emphasis to the sense of oppositional force, followed by Pinhas’ annihilation of the guilty parties.

Both the JE layers of the biblical corpus and Greek literature examined in the following section describe what some scholars have described as a “dynamic” understanding of the relationship between the divine and human worlds. In discussing biblical literature, Eyal Regev notes how human actions affect holiness, which in turn generates changes in the ‘real’ world.<sup>78</sup> This worldview is operative in the Priestly writings, including the Holiness Code. As we will see, the early rabbis, or Tannaim, will shift from a dynamic to a static cosmology, in which impure actions will not endanger the holy. Each iteration of the cosmology conceives of divine Presence in a unique way. The wilderness traditions speak of a cloud that hovers over the Tent

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<sup>75</sup> Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000), 41; Milgrom calls it the force “demonic,” further emphasizing the concrete nature of defilement. Milgrom, *Leviticus 1-16*, 256.

<sup>76</sup> It should be noted here that the collective consequence only comes when the crime is against God, never person to person. See Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” in *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), 37.

<sup>77</sup> The choice to translate קָצַף as anger matches the depiction of slaughter attributed to God in the text.

<sup>78</sup> Eyal Regev, “Reconstructing Qumranic and Rabbinic Worldviews: Dynamic Holiness vs. Static Holiness,” in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls: Proceedings of the Eighth International Symposium of the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature, 7 - 9 January 2003*, ed. Aharon Shemesh, Steven D. Fraade, and Ruth Clements (Leiden: Brill, 2006), 108.

of Meeting. In Leviticus, rituals are directed at maintaining Presence in the Holy of Holies itself, while rabbinic literature, in the absence of the sanctuary, will de-centralize Presence even as it imagines a still functioning Temple. The Deuteronomistic literature, a portion of which will be taken up in the next chapter, positions holiness in the Israelites themselves.<sup>79</sup> The following section will compare Israelite traditions with ideas expressed in Greek literature.

### **E. Further Literary Evidence of Pollution as a Setting for the Priestly Corpus**

Dating the Priestly traditions of the Israelites prior to the exile, roughly the eighth to sixth centuries BCE, aligns their cosmologies with similar views of miasma in the Greek world.<sup>80</sup> To note this is not a claim for cross-fertilization: instead it shows that Israelite beliefs were not unique in the ancient world. Throughout this literature, human rage was sometimes attributed to the gods, but destructive events were also understood as supernatural responses to human action. Greek literature provides a contrast to Israelite depictions of narrative characters, both in their interpersonal responses and in their interactions with the heavens.

The poetry attributed to Homer *The Iliad* literally begins with rage. The warlord Agamemnon had dishonored the god Apollo when he took his priest's daughter, Chryseis, as a spoil of war, but then refused Chryses' ransom for her return. Apollo's rage at that act incites a plague, and the Greek leaders pressure Agamemnon to return the young woman. Agamemnon, in his anger, appropriates Achilles' prize, the young woman Briseis. This complex drama, played out over the first 150 lines of the poem, engages with human hurt, the attribution of

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<sup>79</sup> See Werman's cosmological descriptions. Her analysis of both the Holiness strata and Qumran literature will be addressed in the next chapter. Cana Werman, "The Price of Mediation: The Role of Priests in the Priestly Halakhah," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Lawrence H. Schiffman, Adolfo Roitman, and Shani Tzoref (Leiden: Brill, 2011), 391.

<sup>80</sup> Bernard Knox, in his introduction to Fagles' translation of *The Odyssey*, says that we are not able to go back before 700 BCE. Homer and Bernard Knox, *The Odyssey*, trans. Robert Fagles (New York: Penguin Books, 1996); Homer and P. A. Draper, *Iliad. Book 1* (Ann Arbor: University of Michigan Press, 2002); Homer and Sheila Murnaghan, *Iliad*, trans. Stanley Lombardo (Indianapolis: Hackett Pub. Co, 1997); Milgrom, *Leviticus 1-16*, 1991; Carr, *The Formation of the Hebrew Bible: A New Reconstruction*.

disease to a god's wrath, and considerations of restitution. The first move towards justice occurs with the return of Chryseis to her father's home. After Agamemnon was pressured to return her, he sent her back with a hundred bulls (I.323), as an offering to Apollo. Nothing more than the daughter was given to the father, but Agamemnon also offered his own sacrifice of "oxen and goats by the hundreds" (I.329).

Achilles' rage is more complex. He refuses to fight for Agamemnon and prays for the Greeks' defeat. When his friend, Patroclus, is killed, Achilles agrees to fight and an appeased Agamemnon returns Briseis to him (19.260). In the midst of his rage, Achilles tells Odysseus how he could be appeased. He rejects any number of gifts, or Agamemnon's daughter: rather, Agamemnon must "pay in full for all my grief" (9.400).<sup>81</sup> As his speech unfolds, it becomes clear that he connects fighting for Agamemnon as death and returning to his home as the chance to live, even without glory (9.428).

At the beginning of *The Iliad*, the seer Calchas informs the Greeks that Agamemnon's rejection of the priest Chryse's ransom offer has generated a plague, due to the fact that the dishonor of the priest dishonors the god. After Agamemnon relents and returns Chryseis, he "order[s] a purification," cleaning and "pouring the filth into the sea" (I.326-8).<sup>82</sup> The idea that certain actions require a purification was retained through centuries and appears in the historian Xenophon's *Anabasis*. Writing in the 5<sup>th</sup> to 4<sup>th</sup> century, he also describes an incident of rage, in which his men attack soldiers who had killed their fellows. The enemy soldiers had come in peace with the dead Greeks, but it was too much for Xenophon's troops. As leader, Xenophon takes responsibility for their actions by admitting to impious deeds and expressing regret.<sup>83</sup> He

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<sup>81</sup> Homer, *Iliad*, trans. Stanley Lombardo (Indianapolis: Hackett Pub. Co, 1997), 170.

<sup>82</sup> Homer, 10.

<sup>83</sup> See Robert Parker's assessment of the import of the scene in Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford: Clarendon Press, 1983), 31.

orders the culpable individuals in his army to provide reparations to the survivors along with purificatory rites.<sup>84</sup>

The fictional Agamemnon does not express regret even though he offers reparation, but in Homer's *Odyssey*, there is a scene in which Odysseus regrets that he won the fallen Achilles' armor. He had argued with Ajax and "the children of Trojans determined the verdict, and Pallas Athena" (11.547).<sup>85</sup> Achilles ultimately blames Zeus (11.559), who refused to listen to Hera's and Athena's pleas to make the Greeks victorious (*The Iliad*, 8.476). In his visit to Hades, Odysseus encounters Ajax, whose anger continues to burn. Sophocles, writing in the fifth century created a play that develops the backstory: Ajax, rendered mad by the gods, murders animals and men before committing suicide. In the *Odyssey* (543-565), Ajax is described as "still angry," while Odysseus reports his regret, addressing Ajax "with words of persuasion and comfort," only for Ajax to leave without a reply. By tracing the award of Achilles's armor to the lost battle instead of his dispute with Ajax, Odysseus does not confront his own role, but merely seeks for Ajax to let go of blaming him. Modern philosophers would suggest that Ajax could not forgive Odysseus until Odysseus acknowledged his own culpability.<sup>86</sup>

Cosmology, a term that comes from the Greek, expresses the idea that the world has an order: the classicist Gregory Vlastos defines it as "the world in its aspect of order."<sup>87</sup> The "world" in this definition includes the interactions between gods and humans, and the above narratives' accounts of sacrifices imply an understanding that these are the means of restoring order. In *The Iliad*, both Agamemnon and Chryses perform sacrifices, even though the human

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<sup>84</sup> See section VII, lines 1-3 in Xenophon, "Anabasis, Books 1 - VII," in *Xenophon*, trans. Carleton Brownson, LCL 90 (Cambridge, Massachusetts: Harvard University Press, 1968).

<sup>85</sup> Homer, *The Odyssey*, trans. Rodney Merrill (Ann Arbor: University of Michigan Press, 2002), 233.

<sup>86</sup> Per-Erik Milam, "Reasons to Forgive," *Analysis* 79, no. 2 (April 2019): 246-7.

<sup>87</sup> Gregory Vlastos, *Plato's Universe* (Seattle: University of Washington Press, 1975), 6.

misdeed has been repaired. Of note are the purificatory actions Agamemnon performs. Responding to a plague, he returns the woman, sacrifices, and cleanses the area. If dishonoring Chryses incites Apollo's wrath, in the form of a plague, these three actions must have a counter-miasmic force.

#### **F. From Ransom to Expiation: The shift in כפר from Num 25 to Lev 5**

Numbers 25:13 describes Pinhas' act as one done on behalf of Israel (ויכפר על בני ישראל). This use of the verb כפר Jacob Milgrom interprets as "ransom" and as the role, par excellence, of the Levite priesthood.<sup>88</sup> The Levitical ordination ritual transfers the effect of the burnt offering onto the priest, so that his successful guarding of the sanctuary ransoms the community from wrath. Priestly readers of the Pinhas narrative were attuned to the character displayed via Pinhas' response to crisis. According to the classicist Christopher Gill, ancient writers portrayed biographies in order to show how an individual "measured up to certain preconceived norms of excellence."<sup>89</sup> As Priestly readers considered the threat to a community's well-being, they developed a system of graded impurities and sacrifices that would act as ransom. This legislation continues to recognize the communal harm of individual acts, even as it removes particular characters such as Pinhas, and inserts language of remorse and confession. Leviticus 5 (paralleled in Numbers 5, which is later than Lev 5, and is part of the Holiness Code), takes up the topic of false oaths. I propose that both of these are direct descendants of the Pinhas

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<sup>88</sup> See Milgrom's *Studies* for his theory that when כפר occurs in relation to נגף/wrath, כופר/ransom is meant. Levine defines כופר as ransom, but does not extend כפר to it. He does mention "ransom for a life," which is how Milgrom in *Studies* positions the Levitical priest's role, but Levine does not reference this or Pinhas, in his discussions. Moreover, he seems to enter a strange territory when he defines the wrath of יהוה as demonic. Moral transgressions are the demonic force that threaten the sanctuary. Milgrom, *Numbers: The Traditional Hebrew Text with the New JPS Translation*, 217; Jacob Milgrom, *Studies in Levitical Terminology* (Berkeley: University of California Press, 1970), 28-32; Baruch A. Levine, *In the Presence of the Lord: A Study of Cult and Some Cultic Terms in Ancient Israel* (Leiden: Brill, 1974), 57, 65, 67-69, and 71.

<sup>89</sup> Christopher Gill, "The Question of Character-Development: Plutarch and Tacitus," *Classical Quarterly* 33, no. 2 (1983): 473.

narrative.<sup>90</sup> The question will be to see how the mentality expressed in Numbers 25 shifts in Leviticus.

Leviticus 5:20-25 is focused on forms of appropriation and transgressions that have an oral component. As we noted at the beginning of this chapter, it lists the following: deception in the “matter of a deposit or loan/pledge or robbery,” withholding from another, deception about the finding of a lost object, or “swearing falsely about any one of the various things that one may do.” These are all deliberate acts which, by definition, are unrepented at the time of their commission. The passage uses the conjunction “and” to link transgression/חטאת to מעל מעל/sacrilege and to deception/כחש. According to Milgrom, מעל can describe sacrilege against the sancta or sacrilege that involves an oath: in either case, calling for a reparation offering/אשם—and, indeed, this sacrifice is called for in line 25. Priestly writings assign a reparation offering/אשם for deliberate sacrilege/מעל offence.<sup>91</sup> All of the cases of deception listed in 21-22 involve the false oath, implicating YHWH in the transgression.

At this juncture, it is possible to ask whether any of the acts—deception, sacrilege, committing a robbery, defrauding another person, lying about a lost item, and taking an oath on the lie—count as the deliberate, unrepentant acts that generate forces of impurity that penetrate the sanctuary? None of these deeds fit Klawan’s definition of ritual impurity, which “results from direct or indirect contact with any of a number of natural sources, including childbirth (Lev 12:1-8), scale disease (Lev 13:1-14:32), genital discharges (Lev 15:1-33), the carcasses of certain

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<sup>90</sup> While Joel Baden argues that a narrative is more likely to be constructed to frame an existing law, a counterpoint is that case law comes out of situations brought before a court. I maintain that core elements, such as plague and the perceived need for communal ransom, reflect the cosmology of the world in which the Homeric tradents lived. Joel S. Baden, “Identifying the Original Stratum of P: Theoretical and Practical Considerations,” in *The Strata of the Priestly Writings: Contemporary Debate and Future Directions*, ed. Sarah Shectman and Joel S. Baden (Zurich: Theologischer Verlag Zurich, 2009), 17.

<sup>91</sup> Milgrom says “oath” on page 320, but “violation of the covenant oath” on page 346. Milgrom, *Leviticus 1-16*, 320, 346.

impure animals (Lev 11:1-47), and human corpses (Num 19:10-22),” among other situations.<sup>92</sup>

But if Lev 5:20-22 enumerates sacrileges involving false oaths, Joshua 7:11 describes the sacrilege of taking dedicated offerings, and reports the command of YHWH to purify/קדש the nation.<sup>93</sup> In this example there is theft (not robbery) and it generates transgression/עבר, “your transgression is ours,” not plague. Yet, the transgressor, Achan, is accused of taking dedicated items called חרם, a crime punishable by חרם or excision. It would seem here that a מעל offence is understood as capable of desecrating the land and sanctuary, necessitating purificatory action, and therefore inhabits the category of moral sin.<sup>94</sup> For this reason, it would seem correct to interpret the list in Lev 5: 20-22 in the same way.

Unlike Achan, who buried his stolen goods, Lev 5: 23 conceives of a perpetrator who feels guilty, and therefore prescribes what must be done to repair the damage. The perpetrator must restore the item in “its entirety,” and pay a fifth again of its value, to his victim. Numbers 5:7 adds confession/וידו to Leviticus 5’s feeling of guilt/אשם.

Generally speaking, the Priestly strata is more explicit in its categorizations of sins and the rituals that ameliorate transgression’s effects. For instance, it assigns a penetration power to the various sins that enter the sanctuary. Two levels of inadvertent sins pollute the courtyard and shrine, respectively, while deliberate, unrepentant sins penetrate the Holy of Holies.<sup>95</sup> The חטאת sacrifice acts as a ritual detergent in these cases, carried out on behalf of the individual (the

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<sup>92</sup> Klawans, *Impurity and Sin in Ancient Judaism*, 23.

<sup>93</sup> The book of Joshua has elements that would suggest it “knows” of the collapse of the Northern Kingdom, placing its account after 720 BCE. Sweeney concludes that the book “plays a role in laying the foundation for the critique of northern Israel in the Hezekiah DtrH.” Hezekiah reigned from 715-686, BCE. Marvin A. Sweeney, *King Josiah of Judah: The Lost Messiah of Israel* (Oxford: Oxford University Press, 2001), 136.

<sup>94</sup> Milgrom, in fact, documents the instances where מעל offences incite God’s wrath. Milgrom, *Cult and Conscience*, 20-37.

<sup>95</sup> Milgrom provides a chart of Temple penetrations in both his *Leviticus 1-16* and “Dorian Gray” article. The article includes text citations for inadvertent and deliberate sins, as well as their amelioration. Milgrom, “Israel’s Sanctuary: The Priestly ‘Picture of Dorian Gray.’”

inadvertent transgressor, who has expressed remorse<sup>96</sup>) or community (in the case of an unrepentant transgressor, on Yom Kippur), to prevent the divine Presence from departing. In the context of the *הטאת* sacrifice, *כיפר*, the piel form, means “purge,”<sup>97</sup> and acts, not on behalf of the individual, but for the community.

Oath or Sancta transgressions, designated *מעל* in the Priestly strata, require an *אשם* sacrifice. Milgrom translates this sacrifice as reparation offering, since it compensates, and is even commutable to monetary payment.<sup>98</sup> But whereas *כפר* in Pinhas was evaluated as a ransom, Milgrom assigns it the meaning of “atone” or “expiate” in Leviticus 5:26.<sup>99</sup> This shift would indicate that the cosmology operative at Baal Peor is only partially operative by the time of the Priestly writers. Instead of interpreting calamity as wrath, we see a concern over what would instigate the deity’s departure. The idea that sin physically threatens the sancta remains, while the effects of encroachment are only described through the cleansing functions of the blood sacrifices. This shift is in line with a move from a concrete narrative tableau to the more conceptual form of a legal text.

In Numbers 25, Israelite men break the covenantal oath by worshipping other gods. This put them under the penalty of *חרם* or death. In Lev 5: 20f, the case law also concerns a false oath, both because a person deals deceitfully with his neighbor, but also because his denial implicates YHWH by the language of his oath. Under the older system of the JE writers, a willful act can only be ameliorated on Yom Kippur (cf Num 15:30). The Priestly writers establish the realization of guilt (*אשם*) and restoration (*השיב*), before bringing the reparation

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<sup>96</sup> Milgrom, *Leviticus 1-16*, 264.

<sup>97</sup> This is, of course, is close to the concept of release that Baruch Schwartz had noted above, but now see Milgrom, *Leviticus 1-16*, 255.

<sup>98</sup> Milgrom, *Cult and Conscience*, 14.

<sup>99</sup> Milgrom, *Leviticus 1-16*, 1083.

offering. “Realization of Guilt” is supplemented in Num 5:7 with the stipulation that the perpetrator “shall confess the wrong done.” These lines privilege the change in heart that will become a cornerstone of modern philosophical considerations concerning when forgiveness is possible. The Holiness Code, which was responsible for Num 5:7, also supplements Lev 5:20-6, when it says at Lev 19:12 that swearing falsely profanes “my Name.” Thus, we see an equivalency constructed between the sancta, the deity, and the name of the deity. The Holiness Code, in Lev 27, further supplements Lev 5 by stating that de-sanctification is ameliorated by a fine of one-fifth the value of sancta property—the same fine amount that is added to the restitution required for fraud.<sup>100</sup>

#### **E. From Expiation to Purity: Yoma 8:9**

A remarkable feature of Lev 5 is the implied interaction between the perpetrator and victim. Both the return of items taken fraudulently, and payment, can only be assumed to be transactions between parties. Moreover, this meeting precedes sacrificial atonement. The Tannaitic rabbis of the second century also stipulate an interpersonal reconciliation when they write in Mishnah Yoma 8:9 that “transgressions between a person and his colleague” require the “appeasement” of the injury. Indeed, this particular text, centered on the Day of Atonement, or Yom Kippur, contains several hints of its biblical precedents.

The beginning of section 8:8 states that “a חטאת and a certain אשם offering atone.” Here the Priestly names of the sacrifices act as referents to both the types of transgressions that called for these respective rites, and their purgative functions. While much of tractate Yoma had already described (and added to) the rituals related in Leviticus 16, the material in chapters 7 and 8 would seem to be set in the rabbis’ contemporary world. Section 8:8 returns to that older era,

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<sup>100</sup> See how Milgrom reasons this in Milgrom, *Cult and Conscience*, 44-5.

even so far as to state that “death,” or Yom Kippur, can only atone for graver sins, leaving the reader to recall the accumulation of impurities that have accrued in the Temple, and the purificatory rites needed to retain YHWH’s presence.

Here's m. Yoma 8.9 again, for easy reference:

The one who says: I will sin and repent, I will sin and repent, these will not accomplish repentance. I will sin and Yom Kippur atones: Yom Kippur does not atone. Transgressions between a person and God, Yom Kippur atones. Transgressions between [a person] and his colleague, Yom Kippur does not atone until he appeases his colleague. Rabbi [E]lazar ben Azaria expounds: “from all of all of your sins before God, you will be purified” (Lev 16: 30b). Transgressions between a person and God, Yom Kippur purifies and between [a person] and his colleague, Yom Kippur does not atone until he appeases his colleague. Akiva said: happy are you, Israel! Before whom are you purified and who purifies you? Your father in heaven! As it is said: I will sprinkle pure water on you and you will be purified, etc. And He said: the mikveh/hope of Israel is God. Just as the mikveh purifies the impure, so the Holy One, blessed be He, purifies Israel.

האומר אחטא ואשוב ואחטא ואשוב  
י אין מספיקים בידו לעשות תשובה  
אחטא ויום הכיפורים מכפר אין יום  
הכיפורים מכפר עבירות שבין אדם  
למקום יום הכיפורים מכפר ושבין  
לבין חבירו אין יום הכיפורים מכפר  
עד שירצה את חבירו ט את זה  
דרש ר לעזר בן עזריה מכל חטאותיכם  
לפני יי תטהרו עבירות שבין אדם  
למקום יום הכיפורים מכפר ושבין  
לבין חבירו אין יום הכיפורים מכפר  
עד שירצה את חבירו י אמר עקיבא  
אשריכם ישראל לפני מי אתם מיטהרים  
ומי מטהר אתכם אביכם שבשמים  
שנו זרקתי עליכם מים טהורים  
וטהרתם וג' וא מקוה ישראל יי מה  
מקוה מטהר את הטמאים אף הקבה  
מטהר את ישראל

The pericope can be divided into four parts: the person for whom guilt is inconsequential; the notion of appeasement, the quote from Lev 16:30, and R. Akiva’s statement. The deliberate

sinner who shows no real sign of remorse would seem to be the same person whose sin, in the days of the Temple, penetrates to the Holy of Holies. As noted above, these sins are cleansed for the community on Yom Kippur. This mishnah, however, denies the efficacy of such a ritual without some personal change. Just as Lev 5:20-26 focuses on sins between individuals (that also implicate YHWH), and then proscribes a repair with an interpersonal component, so too does this mishnah. The guilt and desire for restoration engendered by the transgressor in Lev 5:23 becomes the focal point of Mishnah 8:9.<sup>101</sup>

The piel form of the verb “רצה” means “appease” or “procure pardon.” In the bible, it means “be pleased,” “accept favorably,” and even, “satisfy by paying off a debt [to God].”<sup>102</sup> Jastrow’s *Dictionary* lists four examples where “appease” describes the effects of sacrifice. Two are from Tannaitic sources: Sifra 1, the sacrifice מרצה/produces pardon; Sifre 32, sacrifices מרצים/are the means of atonement. Yalkut, a collection from Tannaitic and Amoritic sources, uses רצה to indicate that the sacrifice is accepted. Jastrow further notes six examples where this form is used opposite כעס/anger, indicating a calming or conciliatory approach.<sup>103</sup> Sifra on Aharei Mot confirms that רצה has the value of persuasion: in Perek 8:2<sup>104</sup> the term פייס is substituted for רצה when it cites this mishnah: פייס means “pacify, conciliate, or persuade.”

While Lev 5:20-6 implies interpersonal contact in the effort to return and compensate for what has been illicitly taken, the verb רצה would make not only contact explicit, but also some sort of agreement between injured and injurer. Indeed, the term places responsibility on the

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<sup>101</sup> Milgrom confirms the connection between the two texts. Milgrom, *Leviticus 1-16*, 370.

<sup>102</sup> Francis Brown, Samuel R. Driver, and Charles A. Briggs, *The Brown-Driver-Briggs Hebrew and English Lexicon* (Peabody, Mass: Hendrickson Publishers, 2010), 2317.

<sup>103</sup> Marcus Jastrow, *Dictionary of the Targumim*, 1493.

<sup>104</sup> Page 83a in Weiss. J. H. Weiss, ed., *Sifra* (Vienna: Jacob Schlossberg, 1862).

perpetrator to find the compensation that will satisfy the victim—a big step forward, philosophically, from the pro forma amounts in Leviticus.<sup>105</sup>

The paraphrase of Lev 16:30 by R. Elazar ben Azariah would seem to dispute this priority. His citation, מכל חטאתיכם לפני ה' תטהרו/from all of your transgressions before YHWH, you will be purified, is the second part of the biblical verse, which reads in its entirety: כי-ביום כפר עליכם יהוה יטהר אתכם/because on this day He will atone you, to purify you from all of your transgressions, before YHWH you will be purified. The statement in Leviticus is the conclusion of the chapter that proscribes the rituals for the Day of Atonement, and acts as a signature to the piece. The partial citation, following midrashic intertextual practices, is meant to recall the whole,<sup>106</sup> and thereby modifies the mishnah. Klawans, when discussing this passage, sees R. Elazar's exclusion of the phrase that contains כפר as indicative of a tannaitic desire to separate atonement from purification/טהר.<sup>107</sup> The editor, however, would seem to have crafted the mishnah to emphasize the biblical point. The line עברות שבין אדם לחברו: forms an envelope structure before and after R. Elazar ben Azariah's citation, so that the work of Yom Kippur is literally central to any reconciliation efforts between humans.

Lev 16:30 forms part of the petitionary prayer said three times by the High Priest in Mishnah Yoma's narrative (at 3:8, 4:2, and 6:2). The first two recitations occur in front of the bull. This bull's ritual more nearly follows the instructions for inadvertent transgressions, found at Lev 4:13-21, even though the Yom Kippur ritual is for deliberate transgressions. The

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<sup>105</sup> As Milgrom points out, other tannaitic traditions support and amplify the priority of restitution over ritual. He cites *m. Baba Kamma* 9:5 and 9:12; the Baraita cited in *b. Baba Kamma* 103b; and *t. Pesah* 3:1. Milgrom, *Leviticus 1-16*, 370.

<sup>106</sup> See, for instance, Boyarin's quotation of Galit Hasen-Rokem, where she says that "a speaker refers to an already existing *parole*, which he applies to a new, intertextual *parole*. Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Eugene, OR: Wipf and Stock Publishers, 2001), 29.

<sup>107</sup> Klawans, *Impurity and Sin in Ancient Judaism*, 1.

mishnah calls the prayer a confession, and indeed contains one, followed by a plea for atonement (כפר נא). The third recitation is in front of the Azazel goat. Remarkable in the mishnah's account is the elaborate washing ritual that prefaces and concludes each segment of the day's activities. For the main rites of the day, that also includes the petitionary prayers found at 4:2 and 6:2, the high priest is brought to the Parvah Chamber and קדיש/sanctifies his hands and feet, טבל/immerses, and again he קדיש his hands and feet. The same sequence is repeated after he completes his reading of the day's Torah portion. Without any activity delineated between them, the sequence of washing is repeated: mishnah 7:3 contains the sequence, and mishnah 7:4 reports that he goes through it again, before celebrating a meal (breaking fast) at the end of the day. These elaborate washings encircle the sacrifices. Just as importantly, the petitionary prayer, said twice within this enclosure, enunciates both a confession and a plea for atonement. R. Elazar's reference to Lev. 16:30 could thus be read as a signifier of the mishnah's petitionary prayer, highlighting the performative nature of speech.

R. Akiva counters R. Eliezer, first, emphasizing that the source of purity is "your Father in heaven," before relocating that Presence. He juxtaposes Ezekiel 32:25 and Jeremiah 17:3 to create a statement that implies that the מקוה in Jeremiah refers to the ritual pool. However, מקוה is a homonym that can refer to either the pool or the concept "hope." Indeed, מקוה ישראל is one of the names of God. The ambiguity already exists in Jeremiah: in line 13 there is the exclamation יהוה ישראל יהוה, followed in 13b with the phrase מקור מים חיים. Jeremiah describes YHWH as both hope and pool (the *mikveh* must have "living" water, sourced from a spring or melting ice). For R. Akiva, who is speaking in the context of purity and atonement, those who have transgressed are able to immerse in the Presence in order to purify themselves. This upends the paradigm of the Levite Temple, where Yom Kippur's sacrifices cleansed the sanctuary in

order to maintain God within the community. R. Akiva uses the collective second person plural to refer to Israel, implying that the person immersing here is not the High Priest, as in the previous chapters of Mishnah Yoma, but the impure members of the community of Israel.

It is worth noting that while the import of R. Akiva's words may have overturned the paradigm of the sanctuary as the collection point for impurity, it is not clear whether this is the import of Mishnah Yoma as a whole. Leviticus prescribes four washings, with three steps as compared to Yoma's seven. The priestly writer describes this as רחץ, instead of the tanna's קדיש. In Yoma's narrative, sanctification comes before and after the rituals of the holy precincts: purity is not as tightly linked to YHWH as R. Akiva's statement, but the "language" formed by ritual acts will always be more cumbersome.

Returning to Bromberger's question, "what conditions must correct answers to why questions fulfill?" we can say that a revision in the perception of how YHWH acts is fundamental. Across multiple sources, the aerial powers of both good and evil actually begin to be transformed into the powers of speech. Most prominent is the oath of allegiance, the breakage of which is the generator of wrath in the Pinhas narrative, but Leviticus 5 implies some verbal contact in its prescribed monetary compensations. Such a faint hint is magnified considerably to actual halakhah in the mishnah.

The third chapter will pick up the theme of water that R. Akiva privileges in this mishnah. The narrative of the High Priest, that precedes Akiva's comment in Yoma, divides the sacrificial actions by way of a series of immersions, far more numerous than the Leviticus text, but consonant with the prescriptions in the Aramaic Levy Document.

The next, intervening chapter, uses the dispute between R. Akiva and R. Eliezer in m. Yoma 7.3 over the placement of the burnt offering, or עולה, as a starting point to determine the

place of sacrifice in the rabbinic imagination. It will be seen again that the power of oaths form a leitmotif across texts dealing with this sacrifice. In this case, blood and oath would seem to have interwoven roles, suggesting that adherence to an oath will eventually take on the quality of detergent.

## Chapter Two: Ritual Analysis

The receiver understands the message thanks to his knowledge of the code. The position of the linguist who deciphers a language he does not know is different. He tries to deduce the code from the message: thus he not a decoder; he is what is called a cryptanalyst....His ideal is to become like a member of the speech community studied. *Roman Jakobson, Selected Writings.*<sup>1</sup>

Contemporary readers of biblical sacrificial rituals are cryptanalysts. Animal sacrifices have long disappeared from many, if not most, of the cultures where readers are engaged with the practices of the religions that developed from these texts. The specific rites catalogued in the Hebrew Bible came to an end with the destruction of the Second Temple in the first century of the Common Era, creating a functional two thousand year gap, but an even larger textual gap, between these practices and today. Communication theorists, from adherents of the code model, such as Jakobson, to proponents of an inferential model, such as Paul Grice, have argued that there needs to be some form of mutual knowledge or recognition of intention for speech acts to be successful. Dan Sperber, a cognitive anthropologist, has argued that coding-decoding is “subservient” to inference.<sup>2</sup> The aim of these models is to explain how a given work succeeds in communicating, but it has been argued that there is a gap between thought and representation that is filled, accurately or not, by the hearer.

The problem of the hearer is compounded when what is heard is actually only read: we are witnesses, not to rituals performed in our presence, but to a description of rites that may or may not portray real actions. As both David Wright and Rolf Knierim have observed, there is a phenomenological difference between a narrative and the event.<sup>3</sup> Knierim notes that the עולה

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<sup>1</sup> Roman Jakobson, *Selected Writings*, vol. 2 (The Hague: Mouton, 1971), 560.

<sup>2</sup> Dan Sperber and Deirdre Wilson, *Relevance: Communication and Cognition* (Cambridge, Mass: Harvard University Press, 1986), 27.

<sup>3</sup> David Wright, “Ritual Theory, Ritual Texts, and the Priestly-Holiness Writings of the Pentateuch,” in *Social Theory and the Study of Israelite Religion: Essays in Retrospect and Prospect*, ed. Saul M. Olyan (Atlanta: Society

texts signal “inexplicit concepts” which need to be reconstructed.<sup>4</sup> David Wright observes that the purpose of writing, might well be found in a re-presentation of an idealized past to fit the present.<sup>5</sup> Both writers suggest that the presuppositions of the idealized text provides gaps that later authors use to craft their own ideologies—a process that this chapter will undertake across literature from biblical and Dead Sea sources to rabbinic. Whether these narratives of rituals were actualized as stated, a key consideration remains how the narrative positions the events. Catherine Bell uses the term ritualization to describe “a way of acting that is designed and orchestrated to distinguish and privilege what is being done in comparison to other, usually more quotidian, activities.”<sup>6</sup> Using the theoretical models reviewed in the Introduction can help decipher which activities are privileged as the narrative text changes from community to community.

Rabbinic sages portray themselves as witnesses to the Temple’s operation and thus members of the ritual speech community. If, because of a separation in time, it is not possible for them to claim a mutual cognitive environment with the Priestly writers of Leviticus, it is still possible to position them within certain mutual assumptions, such as a cosmology defined by the human-divine relationship and held together via a covenant. Generative grammar, by abstracting out linguistic properties, can help determine not only the code of the Yom Kippur rites in Leviticus, but what the rabbis decoded in their reading of the Leviticus ritual. This decoding includes fitting the knowledge of Leviticus with their knowledge of Numbers, and how other groups, such as priestly ones, interpreted this material. It also includes their own positions on the

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of Biblical Literature, 2012), 197; Rolf Knierim, *Text and Concept in Leviticus 1: 1-9* (Eugene, OR: Wipf and Stock Publishers, 2010), 19.

<sup>4</sup> Knierim, *Text and Concept*, 22.

<sup>5</sup> Wright, 200-1.

<sup>6</sup> Catherine M. Bell, *Ritual Theory, Ritual Practice* (New York: Oxford University Press, 2009), 74.

relationship between biblical texts and their interpretative practices. Both of these latter points provide inferential data through which to process the codes.

This chapter will begin by with a dispute in Mishnah Yoma between Rabbi Akiva and Rabbi Eliezer over the burnt offering, or עולה. R. Akiva effectively restructures the entire day from what had been presented thus far in the Mishnah, by relocating the sacrifice in the morning. This begs the question of what this sacrifice meant to the two rabbis: how did they understand it, as members of a milieu shaped by Second Temple interpretations of Scripture and authority? Analyzing the structure of the עולה as it is portrayed through a number of sources can help decipher shifts that indicate sectarian stress markers. Utilizing the work of Naphtali Meshel, we will look at the biblical sources before turning to the Aramaic Levi Document, Jubilees, and the Temple Scroll.

#### **A. The Dispute Between R. Akiva and R. Eliezer**

Yoma 7.3 presents the following dispute:

ג. ואם בבגדי בוץ קרא קידש  
ידיו ורגליו ופשט ירד וטבל עלה  
ונסתפג הביאו לו בגדי זהב ולבש  
קידש ידיו ורגליו יצא ועשה את  
אילו את איל העם שבעת כבשים  
תמימים דברי ר' אליעזר ר' עקיבא  
אמ' עם התמיד של שחר היו קריבים  
אבל פר העולה ושעיר הנעשה בחוץ  
היו קריבים עם התמיד של בין  
הערבים.

3. And if he reads in linen clothing, he sanctifies his hands and his feet and undresses, goes down and immerses, goes up and dries himself. They brought him gold clothing and he washes, sanctifying his hands and feet. He went out and sacrificed his ram and the people's ram, the seven unblemished male sheep: the words of R. Eliezer. R. Akiva said: they used to be sacrificed with the daily morning offering but the burnt offering ox and the male goat, done outside, was sacrificed with the daily afternoon offering.

The dispute, placed towards the end of the day, as narrated, highlights the עולה by its very interruption. It reminds the audience, whether in the sage circle where the dispute originally took place, or across the centuries, that there are other biblical texts that not only speak of the “tenth day of the seventh month,” but also of the עולה itself. It is an example of the mishnah’s narrativity, by placing the both the חטאת and the עולה within a certain history of thought. In the Introduction, Joshua Levinson was cited for his observation that supplementing a biblical text gives us “two texts in one.”<sup>7</sup> However, as the halakhah for the עולה is traced, we will find many more than “two” texts for our one.

### **B. The Biblical עולה or Burnt Offering**

Leviticus 16 presents the sequence of events on the tenth day of the seventh month, the day now known as Yom Kippur, or the Day of Atonement. Here’s a simple outline of these events, excluding immersion and dressing rituals (which will be examined in Chapter Three):

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<sup>7</sup> Joshua Levinson, “Dialogical Reading in the Rabbinic Exegetical Narrative,” *Poetics Today* 25, no. 3 (Fall 2004): 505.

16:3	Bull for חטאת Ram for עולה	Aaron's offering for himself and his household, neither offered yet
16:5	2 male goats חטאת 1 ram עולה	Offerings for the people of Israel (בני ישראל) neither offered yet
16:7	2 male goats	Aaron lets stands before LORD
16:8	2 male goats	Lots determine goats' destinations
16:9	1 male goat for חטאת 1 male goat for release	Designated for LORD Designated for Azazel
16:11	Slaughter of bull חטאת	[Blood,] coals, incense brought to altar behind the curtain
		Blood sprinkled on east side of cover and sprinkled 7x in front of cover
16:15	Sacrifice of goat חטאת	Blood brought & sprinkled in same way
16:16	Blood of Bull & Goat	"altar before LORD": blood on each horn of altar, and 7x on altar
16:20	2 <sup>nd</sup> goat to wilderness	
16:24	Ram עולה Ram עולה	Aaron's ram offered People's ram offered
16:25	Fat from חטאת animals	Turned into smoke
16:27	Hide, flesh, and dung of חטאת	Taken outside & consumed in fire

The Introduction provides an overview of Naphtali Meshel's work on the linguistic attributes of ritual. Lev 16 presents a series of rituals, each of which have a number of praxemic rules. Interestingly, the עולה, which is accompanied by jugation offerings in other biblical passages, is not presented as having any here. The praxemic rules for the ox and goat of the חטאת are detailed, with the same set of actions occurring in the Holy, the Tent of Meeting, and the Altar

Before the Lord. Each set of actions begins at the Altar Before the Lord, before proceeding to its respective location. Obviously, the slaughter of each animal only occurs once. These actions are stated to accomplish כפר.

- Slaughter bull (same steps for goat)
- Bring coals and incense from Altar Before Lord to (either Ark of Pact; Tent of Meeting Altar; or, Altar Before the Lord)
- Create a cloud of incense
- Sprinkle blood on East of cover and in front of cover, 7x

Lev 16: 24b states: ויצא ועשה את עולתו ואת עולת העם וכפר בעדו ובעד העם. “and he shall go out and sacrifice<sup>8</sup> his עולה and the עולה for the people and atone/expiate for himself and for the people.”<sup>9</sup> This can be compared to Numbers 29:8-11, which also stipulates what should be done on the tenth day of the seventh month:

8 והקרבתם עולה ליהוה ריח ניחוח פר בן בוקר אחד איל אחד כבשים בני שנה שבעה תמימים יהיו לכם 9 ומנחתם סלת בלולה בשמן שלשה עשרונים לפר שני עשרונים לאיל האחד 10 עשרון עשרון לכבש האחד לשבעת הכבשים 11 שעיר עזים אחד חטאת מלבד חטאת הכפרים ועולת התמיד ומנחתה ונסכיהם

8. And your burnt offerings for YHWH will be a pleasing odor: one bull of the herd, one ram, seven yearling unblemished sheep for you. 9. And their meal offering [is] choice flour with oil: three tenths for the bull, two tenths for the one ram. 10. One tenth for each of the seven lambs. 11. One goat is a חטאת offering in addition to the חטאת הכפרים and the daily עולה, with its meal and libation offerings.

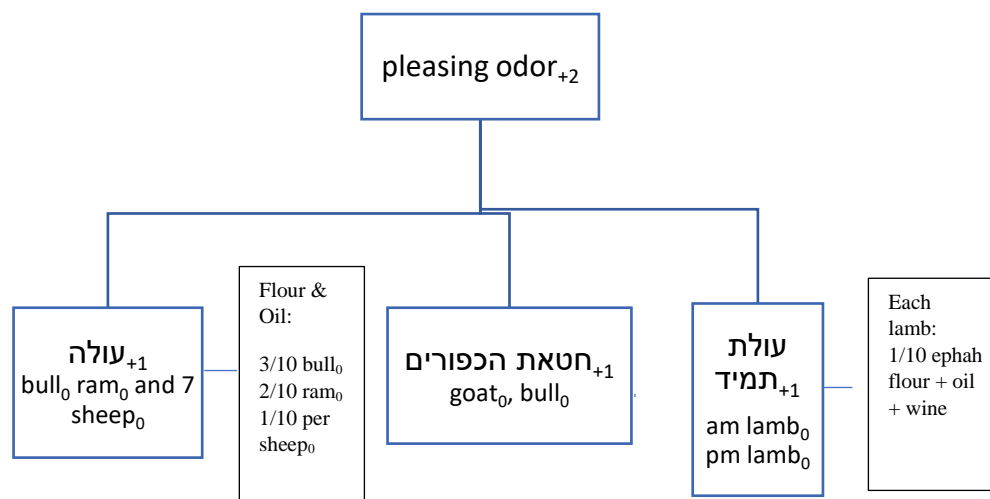
While Leviticus stipulates only two rams for the עולה, Numbers 29 increases the animals and provides grain and oil supplements. A חטאת (Ex 29: 36) and חטאת הכפרים (Ex 30: 10), plus the עולת תמיד (Ex 29: 38-42 and Num 28: 3-8) expands the definition of an עולה for this day even more. While Ex 30:10 does not specify the animals for the חטאת הכפרים, Baruch Levine

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<sup>8</sup> Goodfriend translates עשה as “sacrifice” when it has a direct object. When the text also includes a grain and liquid accompaniment, she reads “prepare.” Elaine Goodfriend, “Leviticus 22:24: A Prohibition of Gelding for the Land of Israel?” in *Current Issues in Priestly and Related Literature: The Legacy of Jacob Milgrom and Beyond*, ed. Roy Gane and Ada Taggar-Cohen (Atlanta: Society of Biblical Literature, 2015), 79, n. 44.

<sup>9</sup> Lev 1: 3-17 prescribes how an עולה should be conducted for each of the animals permitted. Details such as the wood for the fire, washing of body parts, etc. are detailed here, but not in any of the texts discussed below. For each animal, the blood is applied to the altar before its body is burnt. Lev 1: 4 tells us that these offerings כפר.

understands a clear reference, in Exodus, to Leviticus 16, which calls for a double sin offering of a bull and goat. He thus defines the atoning purification as a complex of rituals at the incense altar, the Holy of Holies, and the Courtyard.<sup>10</sup> Following Meshel,<sup>11</sup> Numbers 29:8 identifies a task for the עולה—it produces “a pleasing odor”—while the following lines (9-11) indicate that this is complex consisting of the “base” עולה, the חטאת הכפרים, and the עולת התמיד. The pleasing odor thus becomes a super-category of the type עולה ( $x_{+2}$ ) while any rituals that make up the category are aligned on the same hierarchic level ( $x_{+1}$ ). The surprising shift is that the praxemic steps of the Leviticus חטאת now fall under the rubric חטאת הכפרים, and that is now understood as part of the task, עולה. The specific sacrificial material, whether animals or subordinate offerings, make up the level  $0$ . A chart, including the jugates, would look like this:



The problem that this structure readily identifies is that the עולת התמיד specifies praxemic rules: one lamb is in the morning and one in the afternoon, but the author of Numbers 29 does not

<sup>10</sup> Baruch A. Levine, *Numbers 21 - 36: A New Translation with Introduction and Commentary* (AB 4A; New Haven: Yale University Press, 2009), 388-9.

<sup>11</sup> Meshel raises the question of how animals of one type of sacrifice (such as חטאת) are still part of an עולה. Definitionally, an עולה is a sacrifice that is completely burned; in contrast, the חטאת's blood is manipulated, before the carcass is burned or eaten. The תמיד, on the other hand, was totally consumed by fire, like the עולה. He proposes that the praxemics of the חטאת offerings remain (such as daubing their blood on the altar), but that their burning followed the praxemic stipulations for a whole burnt sacrifice. Meshel, “Toward a Grammar,” 549, 552; Meshel, “Grammar” of Sacrifice, 119.

indicate whether the other two rituals are to be done with the morning lamb or the afternoon lamb. A proper graphing would need to portray two structures: a morning scenario in which only the lamb and its supplements is offered, followed by an afternoon ritual where the lamb is offered with the עולה and חטאת הכפרים; or, a morning scenario in which the lamb is offered with the עולה and חטאת הכפרים, and an afternoon ritual with only the lamb. The lamb acts grammatically as a modifier, creating a jugate relationship with the other offerings. In Lèvi-Strauss' terms, it is the sign that circulates, creating a time orientation. That we do not know this orientation will become a point of difference among tradents of the tradition, as well as modern scholars.

Israel Knohl has proposed that the Yom Kippur segment of Numbers 29 consists of several strata. Verse 11 notes that the חטאת הכפרים and the goat are in addition (מלבד) to the עולה. “מלבד חטאת הכפרים ועולת התמיד ומנחתה ונסכיהם” Knohl says this indicates an editorial hand from the Holiness School, dating to either the exile or later.<sup>12</sup> A different perspective on how the Numbers calendars were composed is presented by Jan A. Wagenaar, who notes that Exodus 29:38-42 and Numbers 28:3-8 both stipulate two burnt offering per day, whereas Ezekiel 46:13-15 and 2 Kings 16:5 only prescribe one עולה.<sup>13</sup> Using Wagenaar's thesis that the increase marks the difference between pre-exilic and exilic or post-exilic, it is noteworthy that Leviticus 16 only mentions one burnt offering, the two rams, without supplements. Wagenaar also characterizes the Lev 23 calendar as a ‘principle’ on which other lists are based.<sup>14</sup> Baruch Levine goes further in proposing that “Ex 29:38-42 lines were introduced so as to provide a basis for Num 28:3-8.”<sup>15</sup>

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<sup>12</sup> Israel Knohl, “The Priestly Torah Versus the Holiness School: Sabbath and the Festivals,” *Hebrew Union College Annual* 58 (1987): 89.

<sup>13</sup> Jan A. Wagenaar, *Origin and Transformation of the Ancient Israelite Festival Calendar* (Wiesbaden: Harrassowitz Verlag, 2005), 150.

<sup>14</sup> Inverted commas are his, although he doesn't attribute the term. Wagenaar.

<sup>15</sup> Baruch A. Levine, *Numbers 21 - 36: A New Translation with Introduction and Commentary* (AB 4A; New Haven: Yale University Press, 2009), 398.

He reads both of these sections as designed to enhance late afternoon or evening rituals, and as evidence that the עולה was developing in prominence.<sup>16</sup> He and Wagenaar are in agreement that Numbers 28 and 29 were written later than Leviticus 23, positioning them in the post-exilic period.<sup>17</sup>

Milgrom dates Lev 23 as exilic, while at the same time claiming that its composition was to preserve the (pre-exilic) cultic calendars.<sup>18</sup> His opinion on the calendric portion of Numbers seems to be a minority position. He supports his position through the observation that the specifics of the offerings are not mentioned, indicating that the audience already knew the details because they are spelled out in Numbers 28. But as Christophe Nihan argues, while Lev 23's delineation of three pilgrimage festivals is similar to other Torah calendars, Lev 23 differs in that it conflates those traditions with the one reported in Ezekiel 45: 18-25. The latter divides the year into two, celebrating festivals in the first and seventh months.<sup>19</sup>

The text critical scholarship supports a change from pre-exilic sequencing of the עולה (after many other rituals, so probably occurring in the afternoon) to a post-exilic sequence, where additional offerings are stipulated. Levine posits that the Numbers rite would occur late in the day, marking a shift from Ezekiel 46: 13-15 and 2Kings 16:5, where the עולה is a morning offering. If Numbers 29 were written during the Second Temple, it was written with knowledge of actual Temple practices. Ezekiel, on the other hand, was a text based on memory, perhaps idealized. It is difficult to say how much of Leviticus 16 expresses observed or idealized

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<sup>16</sup> Levine, 400.

<sup>17</sup> Levine, 47.

<sup>18</sup> Jacob Milgrom, *Leviticus 23 - 27* (AB 3B; New Haven: Yale University Press, 2010), 2055.

<sup>19</sup> Christophe Nihan, "Israel's Festival Calendars in Leviticus 23, Numbers 28-29 and the Formation of 'Priestly' Literature," in *The Book of Leviticus and Numbers*, ed. By Thomas Römer (Leuven: Uitgeverij Peeters, 2008), 213.

representations. What is important, however, is that the practical text exhibits modifications of the “language” of what constitutes a “pleasing odor.”

### C. The Aramaic Levi Document (ALD)

The Aramaic Levi Document probably dates to the third or very early second century BCE.<sup>20</sup> It is possible that it is a translation of a Hebrew original. More about its provenance will be said in Chapter Three. Reconstructions of it have come from fragments found in the Cairo genizah, Qumran, and a codex from the 11<sup>th</sup> century located at the Monastery of Koutlounous, at Athos, Greece, the *Testament of Levi*.<sup>21</sup> The section on the עולה is part of a narrative in which Isaac teaches his son, Levi, the law of the priesthood. It comes after Levi received a vision of heaven and learns that “the kingdom of the priesthood is greater than the kingdom [ ] to the [Most H] G[ ]d.”<sup>22</sup> The vision anchors the successive instructions in a pseudepigraphic setting, while privileging the institution of the priesthood. The role of priests as sanctifiers of table meat is common to both ALD and Jubilees, as we shall see.

The עולה steps span lines 19 thru 57 of Drawnel’s reconstruction. The following is based on both Greenfield, et.al. and Drawnel.<sup>23</sup> Both use the Greek and fragments from Qumran. The chart skips explanations, in order to document the steps of the ritual. Supplementary actions are in the second column, so as to clarify the procedure.

Wash	Before entering the House of God. After, put on priestly garments.
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<sup>20</sup> See Greenfield, et. al. for the state of the debate. Their positioning of the text, which seems to be the consensus, is based on both the epigraphical evidence from the oldest manuscript (4QLevi<sup>f</sup>) and textual dependencies in Jubilees and the Damascus Document. Jonas C. Greenfield, Michael E. Stone, and Esther Eshel, *The Aramaic Levi Document: Edition, Translation, Commentary* (Leiden: Brill, 2004), 19.

<sup>21</sup> The two reconstructions that I use are in Greenfield, et. al. and Drawnel. The Genizah fragments were first published in *The Jewish Quarterly Review (JQR)*. Six fragments of ALD can be found in DJD 22. Leonard Pass and John Arendzen, “Fragment of an Aramaic Text of the Testament of Levi,” *JQR* 12, no. 4 (1900): 651–61; R. H. Charles and A. E. Cowley, “An Early Source of the Testaments of the Patriarchs,” *JQR* 19, no. 3 (1907): 566–83; George Brooke et al., *Qumran Cave 4, XVII, Parabiblical Texts, Part 3*, DJD 22 (Oxford: Clarendon Press, 1996), 1–72. Greenfield, Stone, and Eshel, *The Aramaic Levi Document*; Henryk Drawnel, *An Aramaic Wisdom Text from Qumran: A New Interpretation of the Levi Document* (Leiden: Brill, 2004); Pass and Arendzen, “Fragment of an Aramaic Text of the Testament of Levi”; Charles and Cowley, “An Early Source of the Testaments of the Patriarchs”; Brooke et al., *Qumran Cave 4, XVII, Parabiblical Texts, Part 3*.

<sup>22</sup> Line 4:7 from 1QLevi frag. 7, col. 1. Greenfield, Stone, and Eshel, *The Aramaic Levi Document*, 67.

<sup>23</sup> Greenfield, Stone, and Eshel, 79–93; Drawnel, *An Aramaic Wisdom Text from Qumran*, 127–142.

Sanctify hands & feet	Before approaching altar.
Split wood offering	Inspect for worms, burn
Blood	Sprinkle on the walls of the altar
Sanctify hands & feet	
Salted portions	Bull: offer head, cover with fat to hide blood; neck; two forelegs; thigh with spine of the loin; two hind legs washed with entrails.
Flour mixed with oil	
Wine	Poured after above
Frankincense	Placed on top
Wash	Let no blood cling to your garment
Sanctify hands & feet	Remove all flesh from the sacrifices
Meat consumption	At home, hide blood in the earth first, before eating meat

The passage lists the types of suitable wood and animals, as well as the measurements for each of the supplements, depending on the animal sacrificed. Wood suitability was based on fragrance: cedar, juniper, almond, silver fir, fir, ash, cypress, fig, oleaster, laurel, myrtle, and asphaltos. Besides the one bull, a second could be offered, as well as a ram, male goat, lamb, and kid. As Martha Himmelfarb notes, the amounts of flour and oil, wine, and frankincense are proportional to the three size categories of animals.<sup>24</sup>

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<sup>24</sup> Martha Himmelfarb, "Earthly Sacrifice and Heavenly Incense: The Law of the Priesthood in Aramaic Levi and Jubilees," in *Heavenly Realms and Earthly Realities in Late Antique Religions*, by Ra'anan Boustan and Annette Yoshiko Reed (New York: Cambridge University Press, 2004), 113.

The ALD sequence for a bull can be compared to Lev 1: 3-9; Lev 2: 1-2, 13; and Num 15: 4-5. The biblical instructions are voiced by the deity, and addressed to Moses, who is commissioned to relay them to the Israelites. They begin, therefore, not with the priest's preparation, but with the offerer:

<b>Leviticus 1</b>	<b>Leviticus 2</b>	<b>Numbers 15</b>
Animal brought to tent of meeting	Meal offering: bring choice flour, pour oil on it, and lay frankincense. Every meal offering seasoned with salt.	Meal offering should be brought with animal: flour with oil mixed in; wine
	Portion of oil and flour set aside for Aaron and his sons.	
Offerer lays his hands on the animal's head		
Slaughtered by Aaron's sons		
Blood dashed against all sides of altar		
Animal flayed and cut up		
Fire on altar, lay wood on fire		
Head & suet placed on wood		
Entrails & legs washed in water		
Smoke: All should be turned into smoke, that is a pleasing odor to LORD		

Noticeably, the biblical accounts do not stipulate the relationship between the cereal and animal offerings: is one sequential to the other or are these ingredients placed on the fire at the same time? ALD says that the meat is salted, whereas Lev 2 directs the salt to be in the meal mixture. Also, Lev 2 directs the priest to scoop out a portion of the oil and flour mixture to be burned, setting aside the rest for his own consumption. Lev 1:4 says that by laying his hands upon the head of the animal, it will כפר for the offerer. This step is absent from ALD. Robert Kugler finds that the differences between the Pentateuch and the ALD indicate that the author of the Second Temple text meant to critique contemporary Temple practices. He notes that the concern for covering blood, as well, is absent.<sup>25</sup> Himmelfarb, however, finds that ALD harmonizes the biblical verses, fills in missing information, and probably represents actual Second Temple practice.<sup>26</sup>

If ALD follows the sequence of Levitical rites, its understanding of blood aligns with the Holiness School. Line 56, from the Mt. Athos document, MS Koutlounousiou 39, translated by Henryk Drawnel, states:<sup>27</sup>

“And when you are at home yourself to eat any flesh, hide (καλυπτε) its blood in the earth first before you eat from the flesh and you will not eat of the blood any longer.”

This injunction is consonant with Lev 17: 13, but contrasts with Deut 12:15-16. Lev 17:13:

“And if any Israelite or any stranger who resides among them hunts down an animal or a bird that may be eaten, he shall pour out its blood and cover it with earth.”

Deut 12:15 first requires that sacrifices be brought to the sanctuary chosen by God, but then line 16 allows slaughter for meat to occur in “any settlement,” line 16 adding:

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<sup>25</sup> Robert A. Kugler, *From Patriarch to Priest: The Levi-Priestly Tradition from Aramaic Levi to Testament of Levi* (Atlanta, Ga: Scholars Press, 1996), 105-106.

<sup>26</sup> Himmelfarb, “Earthly Sacrifice,” 109, 110, and 111.

<sup>27</sup> Drawnel, *An Aramaic Wisdom Text from Qumran*, 142.

“But you must not partake of the blood, you shall pour it out on the ground like water.”

The Deuteronomy School,<sup>28</sup> a product of Josiah’s reforms, relaxed slaughter regulations, but ALD testifies here to the Holiness School’s concern that blood spilt in slaughter must be covered. This speaks to a concern with the proper handling of blood, which will also be seen in Jubilees, in the next section.

The Aramaic Levy Document links blood and life to a concern that blood not remain on the garment after slaughter, and is the last of a series of ritual washings. These washings are not part of biblical sacrificial halakhot, except for the instructions for Yom Kippur. Lev 16:4 relates that the high priest bathes before putting on his vestments; then again at Lev 16:24, after he lays his hand on the Azazel Goat and before his עולה, he bathes. The priest who sends the Azazel goat and the priest who burns the hide, flesh, and dung of the חטאת offerings outside of the camp, also bathes. In both of those cases, the priests bathe “after they re-enter the camp,” implying that it is not the action they perform on the animals, but the boundary crossing, that is at issue. The high priest’s ritual, on the other hand, is likened to his donning and removing of the linen garments used for the חטאת. In ALD, before entering “the house of God,” Levi is instructed to wash, put on the priestly garments, and then wash his hands and feet again.<sup>29</sup> Jacob tells his son that when he is about to sacrifice, he should wash his hands and feet.<sup>30</sup> The Greek manuscript instructs Levi to wash his hands and feet after the blood is applied to the walls of the altar, but

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<sup>28</sup> Sweeney documents how the centralization of the cult was linked to royal authority. The laws benefit the poor and disadvantaged. In the case of slaughter, it became easier to eat meat, even as it disregarded sanctification rituals. See Sweeney for social justice issues: Marvin A. Sweeney, *King Josiah of Judah: The Lost Messiah of Israel* (Oxford: Oxford University Press, 2001), 154.

<sup>29</sup> From the Cairo Geniza, Bod c 19. Greenfield, Stone, and Eshel, *The Aramaic Levi Document*, 78.

<sup>30</sup> Bod c 19 attestation. Drawnel follows the Mt. Athos text here, which says to wash after all the sacrifices are complete. See Hollander and de Jonge for a review of opinion on the Mt. Athos manuscript’s reliability in accessing Second Temple thought. When the Greek can be corroborated with the Aramaic, it is close. However some scholars posit an “historical continuity.” Greenfield, et. al. and Drawnel both use it to fill gaps in the scrolls. Greenfield, Stone, and Eshel, 78-9; Drawnel, *An Aramaic Wisdom Text from Qumran*, 124; Harm W. Hollander and Marinus de Jonge, *The Testaments of the Twelve Patriarchs: A Commentary* (Leiden: E.J. Brill, 1985), 23-25.

before the parts are burned. Levi is to wash his hands and feet when he approaches the altar with each sacrifice. Further, he must wash his garments on the same day and wash his hands and feet continually.

The introduction of washing to priestly rituals beyond Yom Kippur raises several questions. While the reversal of ritual impurity often prescribes immersion,<sup>31</sup> the washing of blood off the body and clothing of the priest suggests the misplacement of a substance that only rightly is placed on the altar. But the multiple washings, even preceding the handling of blood, suggests an extension of the purging function of blood. The interesting addition of multiple washings to the priestly rite precedes, by several centuries, archaeological evidence of mikvaot found outside of the ritual setting. These sites date from early to mid-second century BCE.<sup>32</sup> What might be deduced from the twin evidence of ALD and various pools, including at Qumran, is that the introduction of immersion rituals into priestly practice served as a base for the extension of purity practices into what Andrea Berlin terms “household Judaism.”<sup>33</sup> Interestingly, while many mikveh were located near wine and olive oil pressing operations, a seasonal use, many other stepped pools are located in homes or courtyards, implying that they were a routine part of life.<sup>34</sup> This discussion will continue in the next chapter.

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<sup>31</sup> Harrington documents priestly and *clal Israel* citations. See Kiuchi for distinctions between impurity (טמא) with by immersion and acts that require both immersion and a sacrificial חטאת offering. Hannah Harrington, *The Purity Texts* (New York: T & T Clark International, 2004); Nobuyoshi Kiuchi, *The Purification Offering in the Priestly Literature: Its Meaning and Function* (Worcester: Sheffield Academic Press, 1987), 62-5.

<sup>32</sup> Adler and Berlin both provide references to current debates. Adler cites finds assessed to be earlier than Berlin. See: Adler, “The Hellenistic Origins of Jewish Ritual Immersion,” *Journal of Jewish Studies* 69, no. 1 (2018): 8; Andrea Berlin, “Jewish Life Before the Revolt: The Archaeological Evidence,” *Journal for the Study of Judaism* 36, no. 4 (2005): 452.

<sup>33</sup> The extent to which it is possible to interpret material finds as proof of a widespread purity concerns in the broader population is a debate. For presentations of the range of assessment, see: Yonatan Adler, “Between Priestly Cult and Common Culture: The Material Evidence of Ritual Purity Observance in Early Roman Jerusalem Reassessed,” *Journal of Ancient Judaism* 7, no. 2 (2016): 228-248; Eyal Regev, “Pure Individualism: The Idea of Non-Priestly Purity in Ancient Judaism,” *Journal for the Study of Judaism* 31, no. 2 (2000): 176-202; Vered Noam, “The Dual Strategy of Rabbinic Purity Legislation,” *Journal for the Study of Judaism* 39 (2008): 471-512.

<sup>34</sup> Yonatan Adler, “Between Priestly Cult and Common Culture: The Material Evidence of Ritual Purity Observance in Early Roman Jerusalem Reassessed,” *Journal of Ancient Judaism* 7 (2016): 236.

In a similar way to the shifts documented in Chapter One for the maintenance of holiness in the community, Cana Werman traces the understanding of holiness from priestly sources to the Holiness School sources, to Qumran. In the Holiness sections of Leviticus, for instance, she posits that its legislation reflects a world-view where God's presence is in the land of Israel, with the tabernacle in its midst.<sup>35</sup> In this view, the concern for where blood is becomes important: blood on clothing, uncovered on the earth, or eaten, is a concern. Although the proscription against eating blood occurs in a Priestly section of Genesis, we see the message amplified in Leviticus 17. While these documents were written prior to a community established at Qumran, they resonate with the ideology developed at Qumran. The consumption of blood, as we will see shortly, is a major concern in the Book of Jubilees. Here, in the Aramaic Levi Document, we see how an initial concern for removing inappropriate locations for blood extends from the priest's body and garments to, I would suggest, the community's "everyday" life through the use of the method that purifies the priest.

In the previous chapter, we looked at R. Akiva's somewhat cryptic declaration that "the mikveh/hope of Israel is God. Just as the mikveh purifies the impure, so the Holy One, blessed be He, purifies Israel." In the Aramaic Levi Document, with its multiple immersions and cleansings, we see a possible generator of Akiva's statement. The ALD does not name the place of bathing, so it circumvents the biblical play on the word that Akiva utilizes. However, the logical link between immersion and the Holy One is plausibly forged in the intensification of practice.

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<sup>35</sup> Cana Werman, "The Price of Mediation: The Role of Priests in the Priestly Halakhah," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Lawrence H. Schiffman, Adolfo Roitman, and Shani Tzoref (Leiden: Brill, 2011), 391.

Chapter Three will take up the issue of immersions again, as Mishnah Yoma, much like ALD, dramatically increases the number of washings, this time, directly inserting them into the Leviticus 16 rite. In the next section, on Jubilees, we will see another innovation that grows out of sacrificial practice, the importance of vows or oaths.

#### **D. The Book of Jubilees**

Although scholars differ, consensus has built around a second century composition for Jubilees, probably between the 170s and 125 BCE.<sup>36</sup> It more than likely preceded the Qumran community, although its halakhic outlook, in many ways, was mirrored by the sect. Its genre, frequently referred to as “re-written bible,”<sup>37</sup> shares similarities with many sectarian works.<sup>38</sup>

The Book of Jubilees was originally written in Hebrew, before being translated into Greek, and from Greek, into Ge’ez. Until the discovery of scrolls at Qumran, the only extant text had been dated to the fourteenth century, and the only complete copy was a fifteenth century Ge’ez edition.<sup>39</sup> The Caves have yielded portions of fourteen copies of Jubilees and these have

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<sup>36</sup> James VanderKam, *Jubilees 1*, ed. Sidnie White Crawford (Minneapolis: Fortress Press, 2018), 37.

<sup>37</sup> This term has lately come under question. See Reinhard Kratz and Eva Mroczek for an overview of the issues. Reinhard Kratz, “Temple and Torah: Reflections on the Legal Status of the Pentateuch between Elephantine and Qumran,” in *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance*, ed. Gary Knoppers and Bernard Levinson (University Park, PA: Eisenbrauns, 2007), 77–103; Eva Mroczek, “Hidden Scriptures, Then and Now: Rediscovering ‘Apocrypha,’” *Interpretation* 72, no. 4 (2018): 383–95.

<sup>38</sup> A number of scholars discuss the sectarian halakhah. A short list would include: Menahem Kister, “Some Aspects of Qumranic Halakhah,” in *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid, 18-21 March, 1991*, ed. Julio Barrera and Luis Montaner (Leiden: Brill, 1992), 571–88; Harry Fox, “A New Understanding of the Sobriquet הַחֲלִיקוֹת הַדֹּרֶשִׁי: Why Qumranites Rejected Pharisaic Traditions,” in *Law, Literature, and Society in Legal Texts from Qumran: Papers From the Ninth Meeting of the International Organisation for Qumran Studies, Leuven 2016*, ed. Jutta Jokiranta and Molly Zahn (Boston: Brill, 2019), 65–98; Cana Werman, “Oral Torah vs. Written Torah(s): Competing Claims to Authority,” in *Rabbinic Perspectives: Rabbinic Literature and the Dead Sea Scrolls and Associated Literature*, ed. Steven D. Fraade, Aharon Shemesh, and Ruth Clements (Leiden: Brill, 2006), 175–97; Aharon Shemesh and Cana Werman, “Halakhah at Qumran: Genre and Authority,” trans. Dena Ordan, *Dead Sea Discoveries* 10, no. 1 (2003): 104–29; Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2009); Yaakov Sussmann, “The History of the Halakha and the Dead Sea Scrolls: Preliminary Talmudic Observations on Miqsat Ma’ase HaTorah (4QMMT),” in *Qumran Cave 4.V: Miqsat Ma’ase HaTorah*, by Elisha Qimron and John Strugnell, DJD 10 (Oxford: Clarendon Press, 1994), 179–200.

<sup>39</sup> James C. VanderKam, *Textual and Historical Studies in the Book of Jubilees* (Missoula, MT: Scholars Press, 1977), 16; James VanderKam, *Jubilees 1*, 15.

provided scholars with the first glimpse at a Hebrew *vorlage*. Although none of these extant sections contain the verses examined below, the Qumran fragments still help reconstruction efforts. In the following, for instance, Cana Werman has used the reconstruction of the עולה in chapter 21 of Jubilees, based on fragments 4Q219, and Elisha Qimran's proposals, in conjunction with the Ge'ez, to provide a Hebrew version.<sup>40</sup>

The Book of Jubilees has two references to Yom Kippur. The first, in 5:17-18 is implicit, while 34:12 is explicit. Unfortunately, neither passage survived in the stash of scrolls from Qumran. VanderKam translates Jub 5:17-18 from the Ge'ez as follows:<sup>41</sup>

**17** Regarding the Israelites it has been written and ordained: 'If they turn to him in the right way, he will forgive all their wickedness and will pardon all their sins.' **18** It has been written and ordained that he will have mercy on all who turn from all their errors once each year.

In contrast, Jub 34:12 does not mention forgiveness for "turning away," but rather, depicts a shocking use of blood, and the resultant sorrow. The text identifies "the tenth day of the seventh month" as the day that Joseph's brothers slaughtered a male goat and dipped Joseph's coat into its blood. VanderKam translates Jub 34: 12:<sup>42</sup>

**12** Jacob's sons slaughtered a he-goat, stained Joseph's clothing by dipping it in its blood, and sent [it] to their father Jacob on the tenth of the seventh month.

This account, unlike Leviticus 16 or Numbers 29, only mentions a single male goat. The passage continues with the deep grief of his parents. Overall, blood impurity, grief, and this particular day, are all linked together. In Jub 6, the story of Noah's land fall and proper and improper manipulation of blood is presented. Although the setting for Noah is before Shavuot, the account has certain resonances with Yom Kippur. In particular, the description of the first

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<sup>40</sup> Cana Werman, ספר היובלים (Jerusalem: Yad Izhak Ben-Zvi Press, 2015), 99.

<sup>41</sup> VanderKam, *Jubilees 1*, 271.

<sup>42</sup> James VanderKam, *Jubilees 2*, ed. Sidnie White Crawford (Minneapolis: Fortress Press, 2018), 916.

offering aligns with the offering depicted in Jub 34. Unlike Joseph, Noah performs two sacrificial rituals, adding by name a burnt offering.

1 ובאחד לחודש השלישי יצא מן התבה ויבן מזבח  
בהר ההוא. 2 ויראה על הארץ, ויקח שעיר עזים  
ויכפר בדמו על כול חטאת הארץ כי נמחה כול אשר  
עליה לבד מאשר היו עם נוח בתבה. 3 ויקטר את  
החלב על המזבח ויקח פר ואיל וכבש ומלח ותור ובן  
יונה. ויעל עולה על המזבח וישם עליה מנחה בלולה  
בשמן. וינסך יין ויתן על הכול קטורת. ויעל ריח  
ניחוח לרצון לפני אלוהים.

1 And on the first of the third month  
he went out from the ark and built an  
altar on that mountain. 2 ויראה\* the  
land, and took a male goat and atoned  
with its blood for all the transgression  
of the land since everything had been  
obliterated on it except those in the  
ark with Noah. 3 And he burned the  
fat on the altar then he took a bull, and  
a ram, and a sheep, and salt, and a  
turtledove, and a dove. He offered as a  
burnt offering on the altar and he  
placed on it an offering mixed with  
oil. And wine was poured, and  
incense placed on, everything. And a  
pleasing aroma went up, acceptable to  
Elohim.

The first sacrifice describes the action, ויראה, happening “on the earth.” James VanderKam and William Gilders interpret this verb as meaning “atone,” based on two variant Ethiopic manuscripts: the differences between the Ge’ez words for “see” and “atone” are small enough for a scribal error.<sup>43</sup> Cana Werman argues, however, there is no clear connection between “atone” on the land and the second part of the verse, which says that the blood of the goat atones for all transgression. First, she notes that the Hebrew translation ארץ is interpretative: the Ge’ez word for “land” is quite similar to the Ge’ez word for “people.” The sentence could well be “the male goat atones for all the transgression of the people,” a possibility that would then open the interpretation of וראה less certainly as “atone.” She argues that blood atonement is not a characteristic feature of the Book of Jubilees, and further, that logically, there was no need for a blood purification as the flood had just been depicted as purifying the land.<sup>44</sup> Genesis 6: 11

<sup>43</sup> James VanderKam, *Jubilees 1*, ed. Sidnie White Crawford (Minneapolis: Fortress Press, 2018), 304; William Gilders, “Blood and Covenant: Interpretive Elaboration on Genesis 9: 4-6 in the Book of Jubilees,” *Journal for the Study of the Pseudepigrapha* 15, no. 2 (2006): 87.

<sup>44</sup> Werman, ספר היובלים, 223.

narrates that the land became corrupt/תשח and was filled with injustice/חמס, resulting in God sending a flood. According to the Brown, Driver, Briggs Lexicon, תשח in this passage means a corruption of morals or religion.<sup>45</sup> Werman notes in another article that the Jubilees author would also be aware of the Holiness Code's Lev 18 injunctions against sexual transgression and how they defile the land (Lev 18:25),<sup>46</sup> but as Klawans points out, according to biblical law, there is no counter-remedy to such defilement.<sup>47</sup> The Holiness Code reflects a cosmology shift from the idea in Genesis that the flood purified the land, or even, that a חטאת would. However, while all of these arguments have validity, they leave the question open.

Both Werman and VanderKam observe that the Genesis Apocryphon uses the Aramaic word for “atone” when transcribing verse 2. Werman believes that the Jubilees author knew the Apocryphon and disagreed with it, while VanderKam posits that Jubilees is the earlier version.<sup>48</sup> He also argues that the second half of the verse uses the verb כפר, strengthening the notion that the two Ethiopian texts, where “atone,” not “appear,” is written, represent the correct transmission.

John Reeves presents a convincing argument that the Ethiopic manuscript attests that fat/šebḥa was offered, indicating a חטאת.<sup>49</sup> The Genesis Apocryphon, while debated as to its

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<sup>45</sup> Francis Brown, Samuel R. Driver, and Charles A. Briggs, *The Brown-Driver-Briggs Hebrew and English Lexicon* (Peabody, Mass: Hendrickson Publishers, 2010), 1007.

<sup>46</sup> Cana Werman, “The Concept of Holiness and the Requirements of Purity in Second Temple and Tannaic Literature,” in *Pseudographic Perspectives: The Apographs and Pseudographs in Light of the Dead Sea Scrolls* (Leiden: Brill, 1999), 170.

<sup>47</sup> As noted in the previous chapter, Klawans divides biblical impurities into moral and immoral. Moral impurities defile the sinner, the sanctuary, or the Land of Israel. In his section on Jubilees, he does not cite Jub 6:2. For a discussion of sins that defile the Land, see Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000), 26; 37.

<sup>48</sup> Werman, 223; VanderKam, *Jubilees 1*. 304-5, n. 11; see also the review of scholarly positions in Daniel A. Machiela, ed., *The Dead Sea Genesis Apocryphon: A New Text and Translation with Introduction and Special Treatment of Columns 13-17* (Leiden ; Boston: Brill, 2009), 13-16.

<sup>49</sup> John C. Reeves, “What Does Noah Offer in I QApGen X, 15?,” *Revue de Qumran* 12 (1986): 417.

relationship with Jubilees, also attests to fat/תרבא burned on the fire. Column X, line 14 reads as:<sup>50</sup>

שעירא לקדמין ובתרה אתה ל' ° [ ותרבא על נורא אקטרת ותניאנא °°°° ]  
**The male goat** first and after it came [ ] I burned fat on the fire; secondly...

According to this author, the male goat is offered, followed by another animal, whose name has not survived, but whose fat was burned on the altar. Moshe Bernstein, reviewing Reeves and Morgenstern, et al, concludes that the Apocryphon account adds credibility to the theory that the Jubilees sacrifice is an חטאת.<sup>51</sup>

William Gilders also interprets the Jub 6 sacrifice as a חטאת.<sup>52</sup> VanderKam, citing Milgrom's work on the parameters of this sacrifice, agrees.<sup>53</sup> Just as seen in the last chapter, however, that the meaning of כפר shifts over time, so Werman notes that sectarians would have read כפר in Jubilees to indicate atonement and forgiveness, and not purge.<sup>54</sup> If we can discount purge as the purpose of the goat sacrifice, then it is possible to read a pedagogical link between Jub 6 and 34, in their portrayal of the proper and improper uses of blood.

While this goat sacrifice is similar to the goat sacrifice in Jubilee's account of "the tenth day of the seventh month," the distinction between the חטאת (if this is a חטאת) and the עולה in Jubilees is different than what we saw in Numbers 29, where the חטאת was subsumed under the "pleasing odor." The surprising link that Jubilees 6 makes, however, is the report that Elohim received the pleasing aroma and, as a result, made a covenant that includes a command to celebrate Shavuot,

<sup>50</sup> English translation follows Morgenstern. Matthew Morgenstern, Elisha Qimron, and Daniel Sivan, "The Hitherto Unpublished Columns of the Genesis Apocryphon," *Abr-Nahrain* 33 (1995): 44, 45.

<sup>51</sup> Moshe Bernstein, "From the Watchers to the Flood: Story and Exegesis in the Early Columns of the Genesis Apocryphon," in *Reworking the Bible: Apocryphal and Related Texts at Qumran*, ed. Esther Chazon, Devorah Dimant, and Ruth Clements (Leiden: Brill, 2005), 58.

<sup>52</sup> Gilders, "Blood and Covenant," 87.

<sup>53</sup> VanderKam, *Jubilees 1*, 306, n. 17.

<sup>54</sup> See the whole article, to follow her examination of multiple sources. Werman, "The Price of Mediation: The Role of Priests in the Priestly Halakhah."

or, the Feast of Weeks. In order to see how Jubilees differs from Genesis, and how Jub 6: 1-3 fits into the larger schema, here's a rough outline of the narrative sequences:

#### **Genesis 8: 20- 9:17**

**8:20** Noah offers עולה  
**8:21a** Aroma generates a response from YHWH  
**8:21b-22** Promise to not destroy again  
**9:1-11** Terms commanded of Noah and his offspring

- **9:4-6** Prohibits consumption of blood and shedding of human blood

**9:12-17** Sign of the covenant

#### **Jubilees 6: 1-17**

**6:1-3a** goat offering  
**6:3b** עולה offering  
**6:4** Aroma generates a response from Elohim, promising not to destroy again  
**6:5-9** Terms commanded of Noah and his offspring

- **6:7** command not to eat blood

**6:10** Noah and sons eternally swear an oath not to consume blood.  
**6:11-14** Noah is to make a covenant with Israel not to eat blood  
**6:15-16** Sign of the covenant  
**6:17-22** Commands Shavuot to be observed

- **6:17** Shavuot is a yearly renewal of the covenant

Three major observations emerge from this comparison. First, as has been already noted, is the addition of the goat offering, which is followed in lines 7 through 14 with instructions to not consume blood. The blood properly manipulated is thus differentiated from meat consumed as part of a human meal. The narrator, speaking in the first person, states that whether blood is taken from other humans or animals, it is a transgression against the prerogative of the divine realm (although Noah is given permission to take the life of a murderer). The improper use of blood is described over lines 7 – 8, 10, and 12 – 14a. Within these instructions, line 11b describes the proper sprinkling of blood on people as part of a covenant seal.

The second observation is how Jubilees positions itself as words given to Moses on Sinai, first by Elohim (Jub 1: 1-26) and then by מלאך הפנים/the Angel of Presence (Jub 1: 27f). Jubilees,

the “real” author implies, is the direct transcription of revealed law.<sup>55</sup> The Angel of Presence, as Narrator, presents the events of Noah’s landfall, then switches to address Noah. In contrast to Genesis, where the Narrator reports (“Elohim said to Noah”), Jubilees switches to second-person address (see 6:5) without a Narrator introduction. Jub 6: 11 would seem to make a further move, using direct speech addressed to “you”/אתה. The “you” is unidentified, but the Narrator tells “you” to make a covenant, with an oath, in a manner that parallels Exodus 24:8, where Moses throws blood on the people after they have affirmed the covenant. While VanderKam points to the similarities of the two passages, Irene von Görtz-Wrisberg suggests that the Narrator addresses Moses.<sup>56</sup> The “you” is ambiguous, but the point Görtz-Wrisberg raises, that Jubilees presents a retrospection to Moses of what has gone wrong, while also seeming to be in the time of the events reviewed, adds authority to passages that are halakhic in nature.<sup>57</sup> The import of the time-switch is to link the not-yet Sinaitic covenant to the Noahide covenant, implying that the events at Sinai go backwards and forwards in time.

The third observation that can be made is the link that seems to be made between the festival of Shavuot and the sacrifice. The author builds this connection through a series of exchanges between the deity and humanity, where the oath, in keeping with the Sinai-base of the text’s teaching, is given the ascendant position. This observation is not without its problems. The Ethiopic manuscripts portray a particular sacrificial ideology that seems to conflict with surviving passages on sacrifice in other parts of Jubilees, found at Qumran. These differences are displayed in the conflicting reconstructions of Cana Werman and James VanderKam.

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<sup>55</sup> Hindy Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Leiden: Brill, 2003), 50.

<sup>56</sup> VanderKam, 312; Irene von Gortz-Wrisberg, “No Second Temple--No Shavuot? The Book of Jubilees as a Case Study,” in *The Ancient Synagogue From Its Origins Until 200 CE: Papers Presented at an International Conference at Lund University: October 14-17, 2001*, ed. Birger Olsson and Magnus Zetterholm (Stockholm: Almqvist & Wiksell International, 2003), 383.

<sup>57</sup> von Gortz-Wrisberg, “No Second Temple,” 385.

Whereas VanderKam hews to the Ethiopic in Jub 6, Werman uses terminology found in Jub 21. The resulting reconstructions reveal a more pious, petitionary relationship between humans and the divine in the Ge'ez reading, versus an exchange relationship. Werman's reconstruction opens the possibility that there were several versions of Jubilees circulating at Qumran, used by competing understandings of authority.

The section of the Noah story relayed in chapter six, lines 1 through 22, depicts a sequence of exchange. After the goat sacrifice, Noah merely offers “a pleasing aroma” but receives the generous gift of the promise of no more floods and abundant food (line 4). The deity then conditions the consumption of meat, which Noah and his sons accept. Line 14 presents the case of when humans disobey this command, and the correction. Finally (line 17), a yearly covenant ritual, Shavuot, is promised, keeping the relationship open. Lines 18 through 22 again describe human failure and success through the generations, along with the command to keep the Festival.

1 - 3a	kid atones for all sins	expiation
3b	עולה	gift
4 - 6	Elohim smells pleasing fragrance and makes a covenant to not send any more floods, will provide bountiful foods	God offers Covenant
7 -9	Don't eat blood	<ul style="list-style-type: none"> <li>• Covenant stipulation</li> </ul>
10	Noah and sons swear an oath not to eat blood	<ul style="list-style-type: none"> <li>• Noah accepts stipulation</li> </ul>
14	Blood law is eternal, every day	Humans transgress Elohim accepts שלמים
17-22	Shavuot	Yearly renewal of the Covenant

Line 14 presents a number of technical difficulties across manuscripts, illustrating how textual disparities reveal various ideological differences. Further, they provide clues to the lineage of contending views of halakhah witnessed in the dispute between Rabbi Eliezer and Rabbi Akiva.

Cana Werman renders the line:

ואין לחוק הזה קץ ימים כי לעולם ישמרוהו לדורות ויהיו **מרצים** עליהם בדם לפני המזבח בכול יום ושעה. ערב ובוקר **יכפרו** בעדם תמיד לפני אלוהים. וישמרוהו ולא יכרתו.

The word Werman posits as **מרצים**, VanderKam asserts is *yetmahalalu*, the Ge'ez for supplicating,<sup>58</sup> and the word Werman posits as **יכפרו**, VanderKam asserts is *yastasreyu*, “which has to do with atonement.”<sup>59</sup> VanderKam thus translates as follows:

This law has no temporal limits because it is forever. They are to keep it throughout history so that they may continue **supplicating** for themselves with blood in front of the altar each and every day. In the morning and in the evening, they are continually to ask pardon for themselves before the Lord so that they may keep it and not be uprooted.<sup>60</sup>

As VanderKam points out, this line resonates with Lev 17:11:

כי נפש הבשר בדם הוא ואני נתתיו לכם על המזבח לכפר על נפשתיכם כי הדם הוא בנפש יכפר

Because the life of the flesh is in the blood and I bestowed it on you for the sake of expiation on the altar for your lives because it is the blood that expiates by means of life.

Milgrom points out that one of the innovations of the Holiness Code, of which this is a part, is that all animals for meat consumption must be brought as “an offering before the Lord” (17:3). He is thus of the opinion that this line refers to the well-being/שלמים sacrifice, since it is this sacrifice, with its blood properly returned to the Lord, that **כפרים** for the transgression of

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<sup>58</sup> This is a scribal mis-reading, the word should be *yetmakhalalu*. VanderKam follows Gilders. VanderKam, *Jubilees 1*, 313, n. 57.

<sup>59</sup> VanderKam, 313.

<sup>60</sup> VanderKam. 298.

consuming blood.<sup>61</sup> Werman, also noting the comparison to Lev 17:11, agrees with Milgrom that this is a שלמים sacrifice. She cites several manuscripts that attest to the phrase בכול יום ושעה, “every day and hour.”<sup>62</sup> VanderKam, reading these manuscripts, is unconvinced, preferring to read “each and every day”—and the word תמיד as a reference to the sacrifice תמיד, offered morning and evening—to the idea ‘always’ or ‘continuously’.<sup>63</sup> He is not alone in this interpretation, both James Kugel and Lawrence Schiffman assert that it is a תמיד, without discussion.<sup>64</sup>

Werman uses the assessment that Jubilees is indicating a שלמים to compare chapter six with chapter 21, which explicitly depicts a שלמים, done as an עולה. 4Q219 contains 4QJub<sup>d</sup>, where line three is:

[ואם תז]בח עלה זב[ח] שלמים לרצון ת[ז]בחנו ואת דמם תזרוק על המזב[ח]<sup>65</sup>

[and if you] sacrifice a burnt offering, a sacrifice of well-being, לרצון, you will sacrifice it and throw its blood onto the altar.

Milgrom points out that רצה has two meaning in biblical Hebrew, accept and desire. The latter meaning comes into use in post-exilic works.<sup>66</sup> As Shlomo Zuckier says, accepting a sacrifice implies meeting certain technical standards, whereas expressing a wish to please connotes

<sup>61</sup> Milgrom chronicles a shift from common slaughter, acceptable in the Priestly strata, to a prescription that blood and suet are the Lord’s. Jacob Milgrom, *Leviticus 1-16* (AB 3; New York: Doubleday, 1991), 29, 216, 221.

<sup>62</sup> These are Ethiopic manuscript numbers 20, 25, and 35. VanderKam gives the citation. Cana Werman, “עיצוב מאורעות דור המבול בספר היובלים,” *Tarbiz* / תרביץ 64 (1995): 183-202; Werman, ספר היובלים, 225; VanderKam, *Jubilees 1*, 314, n. 58.

<sup>63</sup> In a private communication, VanderKam says that the Ge’ez is wa-sa’āt(a), or “hour.” He is of the opinion that that word is a mistake for ‘elat(a), or “day.” See above note for disagreement with Werman. VanderKam, *Jubilees 1*.

<sup>64</sup> James L. Kugel, “Jubilees,” in *Outside the Bible: Ancient Jewish Writings Related to Scripture*, ed. Louis Feldman, James L. Kugel, and Lawrence H. Schiffman, vol. 1 (Philadelphia: Jewish Publication Society, 2013), 312; Lawrence H. Schiffman, “The Sacrificial System of the Temple Scroll and the Book of Jubilees,” ed. Kent Harold Richards, *Society of Biblical Literature 1985 Seminar Papers*, 1985, 219.

<sup>65</sup> Harold W. Attridge et al., eds., *Qumran Cave 4, VIII; Parabiblical Texts*, DJD XIII (Oxford: Clarendon Press, 2003), 57.

<sup>66</sup> Milgrom, *Leviticus 1-16*, 149-150.

something more personal.<sup>67</sup> Gary Anderson sees this slightly differently. While the gift economy Zuckier notes is a kind of reciprocity, one in which a balance of power is ongoing and not achieved, Anderson reads Qumran documents as understanding transgression to be the creation of an obligation that needs to be repaid. In that sense, lines 1-22, overall, display an exchange relationship, whereas line 14 suggests that a mis-use of a gift results in a debt.

The idea that “blood is the Lord’s” is, to borrow the vocabulary of recent debates, a naturalist one—it expresses what blood “really” is.<sup>68</sup> In this view, blood taken can only be repaid by blood. A number of scholars have remarked that sectarian literature, overall, bases halakhah on these principles. This helps to make the choice of מרצים in Werman’s reconstruction more normative. However, there is also an interesting innovation displayed in lines 1-23. While line 14 focuses on a sacrifice as a repair, line 18 details how Noah’s sons and the generations up to Abraham ate blood—again transgressing the command. Here, however, the repair is not sacrifice, but the keeping of Shavuot, the yearly covenant festival. Earlier, at line 7, God demanded an oath not to eat blood, and at line 11, the oath at Sinai is recalled, sealed by Moses’ blood aspersion of the people. At the end of this section, the blood of repayment has been replaced by a verbal swearing.

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<sup>67</sup> Zuckier cites Daniel Ullucci’s work on sacrifice in the ancient Mediterranean. Ullucci suggests that there is a “misrecognition” of value (much like the generous response to a pleasing aroma) that elicits, in turn, another offer. Bourdieu, whom Ullucci cites, describes the transfer from material to symbolic value in such exchanges. Shlomo Zuckier, “‘Acceptable’ to ‘Will’: The Rabbinic Transformation of Ratzon in Sacrifice and Prayer,” *Hebrew Bible and Ancient Israel* 7 (2018): 446; Daniel C. Ullucci, *The Christian Rejection of Animal Sacrifice* (New York: Oxford University Press, 2012), 24-26; Pierre Bourdieu, *The Logic of Practice* (Stanford, CA: Stanford University Press, 2008), 119.

<sup>68</sup> Daniel R. Schwartz, “Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law,” in *The Dead Sea Scrolls: Forty Years of Research*, ed. Uriel Rappaport and Devorah Dimant (Leiden: Brill, 1992), 229–40; Jeffrey L. Rubenstein, “Nominalism and Realism in Qumranic and Rabbinic Law: A Reassessment,” *Dead Sea Discoveries* 6, no. 2 (1999): 157–83; Christine Elizabeth Hayes, “Legal Realism and the Fashioning of Sectariness in Jewish Antiquity,” in *Sects and Sectariness in Jewish History*, ed. Sacha Stern (Leiden: Brill, 2011), 119–46.

Returning to Naphtali Meshel and the dilemma of locating a meaning for sacrifice, this section of Jubilees is thought provoking. The exchange structure that it utilizes for the עולה highlights the importance of this sacrifice. It also uniquely positions oral performance, a move that we will see again in Mishnah Yoma.

### **E. Temple Scroll**

Three versions of this scroll were found in Qumran Cave 11, the best, 11Q19 (11QT<sup>a</sup>), can be dated to the first century CE and has 67 columns. The earliest edition of the scroll, or possibly a source of the scroll, 4QRT, can be dated to 150 BCE. It is now the consensus that it originated outside of Qumran, but it remains debated as to the community that produced it.<sup>69</sup>

The Temple Scroll (TS) presents itself as divine direct speech. It also provides the reader with a detailed account of the Temple's construction, furnishings, and sacrifices. This authoritative account would seem to be the work of priestly circles, but in fact it presents theologies that counter the priestly narrative. As we will see, certain of these views correspond to those found in rabbinic debates.

Many commentators have noticed that Deuteronomic<sup>70</sup> views underlie the composition of the Temple Scroll. Michael Wise, in his form and redaction critical study of the Scroll, lists 179 citations: with a few exceptions, these are all from Deut 12-23. Deut 15 and 16 are relatively

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<sup>69</sup> The two other cave 11 scrolls are 11Q20 (11QT<sup>b</sup>) and 11Q21 (11QT<sup>c</sup>). Himmelfarb documents the dating debate in note 31 to page 93. She cites the date of the fragment 4Q524 as evidence that a pre-sectarian composition existed. See also Jonathan Vroom. Martha Himmelfarb, *A Kingdom of Priests: Ancestry and Merit in Ancient Judaism* (Philadelphia: University of Pennsylvania Press, 2006), 93; Jonathan Vroom, *The Authority of the Law in the Hebrew Bible and Early Judaism: Tracing the Origins of Legal Obligation from Ezra to Qumran* (Leiden: Brill, 2018), 101-4.

<sup>70</sup> Schwartz carefully separates the sources of Deuteronomy from the scroll now part of the Torah. The sources were written in conjunction with the administration of King Josiah and are Deuteronomic. The scroll is Deuteronomic: it was written after 586. The scroll (D) was used by scribes to form a history (DtrH) that is in the books of the Former Prophets. Baruch Schwartz, "The Pentateuchal Sources and the Former Prophets: A Neo-Documentarian's Perspective," in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Christian Gertz et al. (Tübingen: Mohr Siebeck, 2016), 784.

lightly cited, as is Deut 28. Almost all of the citations occur in the later columns of the Scroll: primarily cols. 55, and 59-66.<sup>71</sup> While the cited chapters from Deuteronomy are mostly halakhic, some material, such as Deut 19-20, prescribes how the new nation should be formed, or the extended functions of the Levitical priesthood, such as Deut 18. He, and others, have labelled these the “Deuteronomic paraphrase.”

Distinct from the Deuteronomic material, Wise identifies the calendar section, which includes Yom Kippur columns, 25:10 to 27:10, as a redactional layer. He posits a proto-Temple Scroll that was modeled on Lev 23, which he calls “Deuteronomized,”<sup>72</sup> but was replaced with details found in Number 28 through 29. Indeed, the redactor’s systemization of scattered biblical laws is a hallmark of the whole Scroll, and has been noted by many.<sup>73</sup> The Yom Kippur columns thus comprise Lev 16, 23: 26-32; and Num 29: 7-11, but while these are from the Priestly source, Aharon Shemesh notes that the Scroll redactor rejects the Priestly theology of holiness.<sup>74</sup>

Shemesh points to the concluding lines of the Festival section (29:2-10), which characterizes “the house” where the sacrifices just delineated will be performed, as the place where “I will cause my name to dwell.”<sup>75</sup> The “name” or שם dwelling in the house is, of course, a mark of Deuteronomic literature, distinct from כבוד, commonly translated as Presence, but more properly “body,” dwelling within the tabernacle or משכן.<sup>76</sup> As noted in the previous chapter, the Priestly source develops a concern for how this Presence is maintained, in the face of airborne

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<sup>71</sup> Michael Owen Wise, *A Critical Study of the Temple Scroll from Qumran Cave 11* (Chicago, Ill: Oriental Institute of the University of Chicago, 1990), 239-241.

<sup>72</sup> Besides Wise, Marvin Sweeney, in a private conversation (March 3, 2021), notes that the Temple Scroll typically put Deuteronomy into conversation with other texts from the Torah to produce new and innovative readings of the Torah and the conceptualization of its contents. Wise, 132.

<sup>73</sup> Vroom provides a review of some of this scholarship. Jonathan Vroom, *The Authority of the Law*, 105-107.

<sup>74</sup> Aharon Shemesh, “The Holiness According to the Temple Scroll,” *Revue de Qumran* 19, no. 3 (2000): 374.

<sup>75</sup> Shemesh.

<sup>76</sup> Sommer argues against “presence” because its depictions are concrete. He notes Ex 33: 18-23, where the כבוד has a face, hand, and back. Benjamin Sommer, *The Bodies of God and the World of Ancient Israel* (Cambridge: Cambridge University Press, 2009), 60.

transgressions that accumulate within the Temple. The Deuteronomists, in contrast, locate God's body in the heavens. If the Temple Scroll uses sacrificial accounts developed from a theology of tension between transgression and Presence, on the one hand, but also proposes that 'only' the Name dwells in the Ark, then questions arise as to how this document represents a particular Second Temple discourse.

The following is comprised of two parts. The first will examine the many issues that the Deuteronomists bring to Priestly discourse. It will be necessary to understand some of the historical forces that led to what is now called the Ephraimite view of holiness, and how it is distinct from the Priestly writers. The second section aims to read the Temple Scroll's unique view of the Priestly material through the lens of the historical issues that make up the E and D sources.

### **1. The Levites and the Aaronide Priesthood**

I follow Menahem Haran, Baruch Schwartz, and Joel Baden in stating that the compilers of the Deuteronomistic corpus used the E, or Ephraimite, source as their base. It is worthwhile to look at E and D conceptions, especially in contradistinction to P, in order to better understand how these worldviews shaped the Temple Scroll's redactor. A number of these themes, in fact, will find their way into two of the ritual elements of Mishnah Yoma that will be examined in Chapter Three. What I propose in the following is that three theologies of E—all Levites are priests; the prioritization of word or oath over habitation within the Land; and prophesy—underline conceptions of holiness in Deuteronomy and also shape how the Temple Scroll reads legal portions of Leviticus and Numbers.

Mark Leuchter has made a compelling case for the origins of the Levites and the factional disputes that are behind two different definitions of priesthood. There are traditions where

priesthood is defined as the sons of Aaron (Ezek 40-48; 1Chron 6:34, 23:18; Ezra, and Nehemiah), and texts that report a subservient role to “the Levites” (including: Num 1:48-53, 3:5-9, 16:9, 18:2; Ezek 44: 11, 13). Leuchter traces the basis for these distinctions to early migrations of Moses-adherents from the Transjordan area to northern, Israelite, settlements around the late twelfth to mid-eleventh centuries.<sup>77</sup> While local holy men inherited their positions, some, like Samuel, were attached to a sanctuary, and Leuchter postulates that the name Levi was derived from the verb ל-ו-ה, to join or connect.<sup>78</sup> A redactional layer of Chronicles lists Samuel as a Levite (1 Chr 6:7-13); while 1 Samuel presents Samuel as a seer (following the narrative in 1 Sam 9-10), a prophet (following 1 Sam 3:20), and a judge (1Sam 7:6, 15, 17). As Sweeney notes, the 1 Sam narratives do not explicitly identify him as either a Levite or priest, but they still portray him acting as such. In 1 Sam 9, for instance, he blesses the sacrifice/זבח while in 1Sam 7: 9-10 he offers an עולה.<sup>79</sup> His actions as a judge are consonant with anthropological studies of inter- and intratribal referees made by Jeremy Hutton which document the role of an outsider group that functions as both arbitrators and holy men.<sup>80</sup> Hutton aims to substantiate Lawrence Stager’s earlier work, which posited that the Levites were a “genealogical

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<sup>77</sup> Leuchter forms his theory by tracing references to Mushites in various biblical genealogical lists. He posits that the Exodus traditions that feature Moses indicate that there was an awareness of this holy man in the central Canaanite highlands. Mark Leuchter, *The Levites and the Boundaries of Israelite Identity* (New York: Oxford University Press, 2017), 70-3.

<sup>78</sup> Both Leuchter and Stager note the root of the term “Levy.” Sweeney notes that Samuel, as a first-born son, fulfills the Ex 13:2 command to Moses “sanctify to me every first-born issue.” Sweeney notes Samuel’s Ephraimite lineage. Leuchter, 84; Lawrence Stager, “The Archaeology of the Family in Ancient Israel,” *Bulletin of the American Schools of Oriental Research* 260 (1985): 27; Sweeney, “Hosea’s Reading of Pentateuchal Narratives: A Window for a Foundational E Stratum,” 868.

<sup>79</sup> Marvin A. Sweeney, “Samuel’s Institutional Identity in the Deuteronomistic History,” in *Constructs of Prophecy in the Former and Latter Prophets and Other Texts*, ed. Lester Grabbe and Martti Nissinen (Atlanta: Society of Biblical Literature, 2011), 168-9.

<sup>80</sup> Jeremy Hutton, “The Levitical Diaspora (I): A Sociological Comparison with Morocco’s Ahansal,” in *Exploring the Longue Duree: Essays in Honor of Lawrence E. Stager*, ed. Schloen J. David and Stager Lawrence (Winona Lake, IN: Eisenbrauns, 2009), 224.

idiom used to map out existing ideal or actual social networks and hierarchies.”<sup>81</sup> This functional appellation does not preclude disputes about lineage or theology.

A prominent example of conflict is King David’s delegation of Abiathar and Zadok to bring the Ark to Jerusalem in the wake of Absalom’s uprising. Abiathar was a Northern figure, associated with the Mushite clan, and the sanctuary at Shiloh, while Zadok’s roots were in Judah, and plausibly worked for the Aaronide Jehoiada (1Chron 12:29). The masterful political move of uniting these factions unraveled under Solomon. The Josianic strata of 1Kings notes that Solomon anointed Zadok (1Kgs 1: 33-40) and expelled Abiathar from Jerusalem (1Kgs 2:28).<sup>82</sup> As Sweeney notes, this and the murder of Adonijah presents a counter-narrative to the praise of Solomon’s wisdom in the subsequent lines.

2 Chron 11: 13-17 reports that “the priests and Levites” left oppressive conditions under Jeroboam and traveled to Judah. While this writer inserts a Levite migration back to the time of Jeroboam-Rehoboam, many Northern priests migrated South during what Carly Crouch has called “the long seventh century.”<sup>83</sup> Leuchter posits that these Levites are the composers of the Deuteronomistic corpus.<sup>84</sup> This “century” saw increasing pressures from Assyria and the reigns of Hezekiah and Josiah, both of whom propose campaigns of centralization that challenged local authorities. The Assyrian Tiglath-pileser III waged war all along the Mediterranean coast and claimed a victory of King Azariah of Judah in 740 BCE. His successor, Shalmaneser, waged war

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<sup>81</sup> The disassociation of the profession from the name of a tribe is argued against by Haran, who notes that Wellhausen attributed the blessing in Deut 33: 8-11 to a Northern, post-monarchical, strata. Haran claims that this reads against the simple meaning of the text. Stager, “Archaeology of the Family,” 27; Haran, *Temples*, 68, n. 14; 74, n. 22.

<sup>82</sup> For redactional layer, see: Marvin A Sweeney, *I & II Kings: A Commentary* (Louisville, KY: Westminster John Knox Press, 2013), 63.

<sup>83</sup> Crouch sets the boundaries for this through a Southern Levant lens, with the Assyrian domination of the region: it begins with Tiglath-pileser III (745-727) and declines with the reign of Assurbanipal (668-626). Carly L. Crouch, *The Making of Israel* (Leiden: Brill, 2014), 8.

<sup>84</sup> Leuchter, *Boundaries*, 163.

in Samaria, and his successor, Sargon, successfully conquered the northern kingdom of Israel in 722. It would be against this background that migrating Levite priests and scribes would pose a cultural challenge to the Aaronide priests of Judah. It follows, then, that Milgrom's *terminus* of the Priestly source to the mid-eighth century is not that far off: the source serves as a counterpoint to Levite theology and ideology.

Crouch uses anthropological perspectives to situate the emergence of theological conflict. First, she notes that when two societies that share much in common come into contact with each other, the resulting ambiguities force a dialectical process.<sup>85</sup> If the Aaronides, for instance, considered only their own line to be eligible for full priesthood, and are challenged by the new immigrants who claim that any Levite is able to perform these functions, we would expect to see new discourses to emerge at the redactional level. An example of this can be found in the Pinhas story.

Pinhas, the hero, is a Priestly figure. Indeed, he represents a particular Priestly ideology, that of the Aaronide priesthood. But as noted previously, the depiction of the effects of sin as plague fits with the Ephraimite experience of physical plagues, while the idea that transgressions travel into the sanctuary is a(n Aaronide) priestly theology.<sup>86</sup> Still, there are elements within the depiction of Pinhas' activities that also point to retained E influences.

Many commentators have noted that Numbers 25: 1-13 can be divided into the least two parts: verses 1-5 and verses 6-13.<sup>87</sup> The first five verses tell us about the daughters of Moab,

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<sup>85</sup> Crouch, *The Making of Israel*, 96.

<sup>86</sup> While a number of scholars, including Sweeney, positions this as a J Levitical source, some others categorize it as P, for the very reason that it reveals a Levitical hand. A few of the scholars cited in the following use the P designation, which I will retain. Marvin A. Sweeney, "Hosea's Reading of Pentateuchal Narratives: A Window for a Foundational E Stratum," in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Christian Gertz et al. (Tübingen: Mohr Siebeck, 2016), 869.

<sup>87</sup> Ariel Seri-Levi, in a forthcoming article, detects two stories in verses 1-5: the story of Baal-Peor and the story of the daughters of Moab. The story of Phinehas, in verses 6-13, represents the third. My thanks to Seri-Levi, who allowed me to consult his work before publication. Ariel Seri-Levi, "Independent Sources Versus Redactional

while verse six switches to a Midianite woman's liaison with an Israelite man. Pinhas, as the grandson of Aaron, and recipient of "the pact of priesthood" for eternity, is memorialized in the story that emerges from the two discrete sources. His violence secures this honor for himself and his descendants, yet it is consonant with the pattern of violence that secured the privileges of the Levite priests.<sup>88</sup>

However, while Pinhas is depicted as a guard to the tent-as-sanctuary, there are elements in the Pinhas section of the narrative that do not fit the Priestly theology. Ariel Seri-Levi notes four textual indicators, which he tentatively assigns to E: Moses' speech to the judges (line 5) carries the tradition in Ex 18, where Moses appoints judges; the Pinhas story is paralleled in Hosea, a Northern prophet; "And Israel dwelt" is a phrase that occurs in Num 21:25, 31 and Num 25:1; and, the setting of Shittim corresponds to Joshua 2:1.<sup>89</sup> Each of these, from judge to prophet to a Northern setting, parallel what we know of the role and origins of the Levite tribe.

Haran notes several features of E's depiction of the Tent of Meeting and Moses' interaction thereof. First, in Ex 33:7, Moses "used to" pitch the tent outside of the camp.<sup>90</sup> The ark, ארון, was in the midst of the camp (Num 14: 44).<sup>91</sup> Second, theophanies in E occur at the entrance to the Tent of Meeting (Ex 33: 9-10; Num 11: 24-5; Num 12: 5, 9-10).<sup>92</sup> In contrast to Priestly sources, in E the Tent of Meeting functions as a place where Moses hides, whereas the Priestly

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Strata in the Book of Numbers: Reexamining the Composition of Numbers 25" (forthcoming); See also, Yonatan Miller, "Phinehas' Priestly Zeal and the Violence of Contested Identities," *Jewish Studies Quarterly* 26 (2019): 117–45; Yonatan Miller, "Sacred Slaughter: The Discourse of Priestly Violence as Refracted through the Zeal of Phinehas in the Hebrew Bible and in Jewish Literature" (Ph.D. diss., Harvard, 2015); Amitai Baruchi-Unna, "The Story of the Zeal of Phinehas and Congregational Weeping at Bethel," *Vetus Testamentum* 65 (2015): 505–15.

<sup>88</sup> See for instance: Joel S. Baden, "The Violent Origins of the Levites: Text and Tradition," in *Levites and Priests in Biblical History and Tradition*, ed. Mark Leuchter (Atlanta: Society of Biblical Literature, 2011), 103-116.

<sup>89</sup> Seri-Levi, "Independent Sources," 9-10.

<sup>90</sup> Menahem Haran, *Temples and Temple-Service in Ancient Israel: An Inquiry into the Character of Cult Phenomena and the Historical Setting of the Priestly School* (Oxford: Clarendon Press, 1977), 263.

<sup>91</sup> Leuchter points to Num 10: 35-36, where the ark is YHWH's war palladium, "the same palladium that is situated in the inner sanctum at the Shiloh sanctuary (1Sam 3:3)." Mark Leuchter, *The Levites and the Boundaries of Israelite Identity* (New York: Oxford University Press, 2017), 74.

<sup>92</sup> Haran, 266.

literature depicts the mishkan as the place where the deity hides.<sup>93</sup> The location of the divine interaction outside of the camp implies that this space, too, is holy. Further, the separation of the Ark, which contained the tablets, from the Tent, suggests a foreshadowing of the Deuteronomistic theology that the Name resides there, not the deity.

The initial setting for the Pinhas story is outside the Tent of Meeting, which faintly conjures the place of divine interaction. The fact that people are weeping, however, overlays this idea, instead acting as a sign that Pinhas belongs to the Aaronite cultic site at Bethel, where weeping was a practice (Judg 2:4; Judg 20:23, 26; Judg 21:2; Hos 12:5; Gen 35: 8).<sup>94</sup> The location of the Tent can also be questioned. In Num 25:8, Pinhas follows the Israelite to the woman's tent.<sup>95</sup> This does not necessarily mean that Pinhas had a short walk from the Tent of Meeting to the couple, but the narrator constructed the action in a way that makes it seem likely. Pinhas left the community at the Tent and followed the man to the other tent, with the narrator only noting that he grabbed a weapon. The hints of E, beginning with the Northern Israelite experience of plagues, and continuing with the placement of the Tent, in a story that is foundational to Priestly (Aaronide) claims, shows how the redactor worked to create a P narrative out of an E source.

The juxtaposition of two sources of course occurs throughout the Hebrew Bible. One interesting example can be found at 1 Kings 8: 10-66, which gives a brief prelude to Solomon's dedicatory speech, the speech itself, and the events preceding the speech. Source critics have

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<sup>93</sup> Besides Haran, Benjamin Sommer describes how the כבוד is hidden in a cloud. Ex 40:34 tells how the כבוד fills the mishkan after the aron with the tablets are placed within. Haran, *Temples*, 268-9; Benjamin Sommer, *The Bodies of God and the World of Ancient Israel* (Cambridge: Cambridge University Press, 2009), 68.

<sup>94</sup> Baruchi-Unna, "Story of the Zeal," 510.

<sup>95</sup> Baruch Levine notes that Pinhas stabbed the couple in front of the קיבה which, with a feminine pronominal suffix, indicates that it is the Midianite woman's. Bauchi-Unna notes that some interpreters, following Julien Morgenstern, have identified the קיבה as the type of tent used by priestesses to practice divination. He notes "though far from being certain, this remains the most attractive interpretative direction." Levine, *Numbers 21 - 36*, 287-288; Amitai Baruchi-Unna, "The Story of the Zeal of Phinehas and Congregational Weeping at Bethel," *Vetus Testamentum* 65 (2015): 514.

understood the Book of Kings to be part of the Deuteronomistic history. Current trends are to place the material within the theological and historiographical perspectives that the texts express. These trends will re-emerge in Mishnah Yoma. According to Sweeney, 1 Kings 8 can be placed within the Josianic period.<sup>96</sup> The chapter expresses the  $\text{הוה}$  theology Sommer notes as characteristic of Deuteronomic writers, but he also notes that the chapter expresses Priestly theology in a select few lines. He divides the chapter: 1 Kings 8: 10-11, Priestly; 12-13, an older poetic fragment; and 14-66, to Deuteronomistic editors.<sup>97</sup> Lines 10-11 echo the theology found in Exodus and Ezekiel, but it is lines 14-66 that Sommer points to as ones that the Deuteronomist particularly responds to when he contrasts the House as a place for the Name, not the place where the Deity dwells.<sup>98</sup> The Deuteronomist here develops the E source, where Moses met the Deity outside the Tent of Meeting (descending in a cloud from above), to a theology where God is in heaven and is accessed through prayer. It is a short extension to take narratives that feature theophany to creating prophetic literature.

In his speech, Solomon repeatedly claims that the House is for the Name, but he also explains, in line 29, how the House is a focal point for God to hear the prayers and supplications of the people. The theme of supplication continues through to the end of his address to God (line 53). The speech proposes that human-divine communication is one-on-one. Not incidentally, the speech centered on prayer also includes references to the covenant, and the problem of repairing disobedience to it. Transgressions are portrayed to affect the community in passages such as Lev 5: 20-26, requiring repair to the injured party, but here, in 1 Kings, the deity is

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<sup>96</sup> Sweeney finds evidence for five compositional strata in 1-2 Kings (exilic, Josianic, Hezekian, Jehu, and Solomon). He locates the account of Solomon's dedication in the Josianic additions. Marvin A Sweeney, *I & II Kings: A Commentary* (Louisville, KY: Westminster John Knox Press, 2013), 15-20; 130.

<sup>97</sup> Sommer, *Bodies of God*, 63.

<sup>98</sup> Sommer.

supplanted. In both cases, there is a verbal component to the repair, but it is greatly emphasized in 1 Kings, where not only the deity is represented verbally, but is reached through the site of that verbal instantiation.

At the end of his speech to the congregation, line 62, sacrifice is mentioned. It is, indeed, a large one (22,000 oxen and 120,000 sheep), accompanied by supplementary offerings. Narratively, descriptions of prayer take up at least 25 lines (with more in the address to the people), versus the three lines that detailed the sacrifices. That the passage, still by the Deuteronomistic hand, would include this elaborate ritual, is not surprising from an anthropologic perspective. Crouch, using the work of Abner Cohen, refers to two broad categories of ethnic identity formation: kinship ideologies and ritual ideologies.<sup>99</sup> Both of these are especially relevant to these lines from 1 Kings, since we can situate them in a time when Assyrian imperialism was exerting pressure on Levite identities, but also, see that the lines that describe sacrifice witness to the continuing importance of these practices. Indeed, Crouch, citing Cohen, notes that “ritual ideologies ...exploit the emotional anxieties of men in facing the perennial problems of existence, of life and death, health and illness, happiness and misery.”<sup>100</sup>

The themes and tensions of this literature have been amplified by the composers of the Temple Scroll. At first glance, before arriving at the end statement to the Calendar section, the Yom Kippur ritual is an intensification of Priestly sensibilities, in that it combines Lev 16:23 and Num 29 into one account. However, we will see how the Scroll shifts the focus of the day from purging the Temple through a renewed emphasis on the עולה as a bond between Israel and the deity. The use of שׁוּ also serves as a marker of theologies that place human-divine interaction outside of the Temple. Like the Pinhas story, Yom Kippur in the Temple Scroll utilizes material

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<sup>99</sup> Crouch, *The Making of Israel*, 100.

<sup>100</sup> Crouch.

from both the E and P traditions. Unlike the Pinhas story, the Scroll privileges the older material.

## 2. Yom Kippur in the Temple Scroll

As mentioned above, three parts of the Temple Scroll were discovered at Qumran, one of which was extensive (11Q19). This scroll still has missing sections, and scholars working with it have used the other scrolls and made assumptions that partially cited lines from Leviticus and Numbers can be used to reconstruct gaps in the scrolls. Column 25, line 10 begins the section on Yom Kippur. It follows a description of the festival for the first day of the seventh month, where the עולת תמיד is listed (25.7), Lawrence Schiffman concludes that the עולה for Yom Kippur follows the same pattern, after the תמיד.<sup>101</sup> From the beginning of the Yom Kippur section proper, to the end of the column, there are no gaps. It provides us with its account of the עולה.<sup>102</sup>

ובעשרה בחודש הזה יום כפורים הוא ותענו בו את נפשותיכם כי כול הנפש אשר לוא תתענה בעצם היום הזה ונכרתה מעמיה והקרבתמה בו עולה ליהוה פר אחד איל אחד כבשים בני שנה שביה (תמימים)<sup>103</sup> שער עזים אחד לחטאת לבד מחטאת החפורים ומנחתמה ונסכמה כמשפטמה לפר לאיל ולכבשים ולשער ולחטאת הכפורים תקריבו אלים שנים לעולה אחד יקריב הכוהן הגדול עליו בית אביו

**10**And on the tenth of this month **11** is Yom Kippur. And you shall afflict yourselves on it because every person who does not **12** afflict themselves on this day will be cut off from his nation. And you shall offer on it a burnt offering **13** to YHWH—one bull, one ram, seven (unblemished) yearling lambs. **14** One male goat—for expiation. Additionally, the purification offering of expiation, and the meal and drink offering, **15** according to its law, for the ox, ram, goat, and for the purification offering of expiation, **16** two rams, one for the High Priest and one for his father's house.<sup>104</sup>

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<sup>101</sup> This is an interesting point. The TS's excerpt from Num 29 does not include the daily עולה, yet, earlier in the chapter, we saw that since this sacrifice occurred in the morning and afternoon, the text was unclear as to whether the preceding offerings were with the morning or afternoon lamb. Schiffman would seem to propose that the TS offers a solution to the problem. Lawrence H Schiffman, *The Courtyards of the House of the Lord*, ed. Florentino Garcia Martinez, *Studies on the Texts of the Desert of Judah* 75 (Leiden: Brill, 2008), 359.

<sup>102</sup> Elisha Qimron, *The Temple Scroll: A Critical Edition with Extensive Reconstructions* (Beer Sheva: Ben Gurion University of the Negev Press, 1996), 39.

<sup>103</sup> Qimron adds this as most probable, since it corresponds with the Masoretic text.

<sup>104</sup> This translation follows Schiffman. He graciously replied to clarifying questions. Lawrence H. Schiffman and Andrew Gross, *The Temple Scroll: 11Q19, 11Q21, 11Q22, 4Q524, 5Q21 with 4Q365a*, vol. 1, *Dead Sea Scrolls Editions* (Leiden: Brill, 2021), 76-7.

It will be noticed that these lines are an assemblage of עולה citations from Num 29: 8-11 and Lev 16: 3 and 5. It ends at the bottom of col. 25, and the next column is blank for a number of lines. Based on the words that are visible, it can be plausibly construed that what follows the above is a description of the חטאת, utilizing language from Lev 16: 11-14.<sup>105</sup> The first two reconstructed lines, following Schiffman, command a bull and two goats, for expiation. One goat is the Azazel goat, while the other goat is paired with the bull. As noted above, Levine understands this pair to be the חטאת הכפורים. The TS now adds the two rams to the goat/bull pair (but done separately), and as before, the חטאת הכפורים is part of the complex that achieves the task of producing a “pleasing odor” for YHWH.

A different argument is made by Cana Werman for placing the עולה at the beginning of the day. She notes that the second mention of the עולה animals, in col. 27.3-4, reads אחר יעשה את הפר ואת ה[א]יל ואת ה[כבשים כמש]פטמה על מזבח העולה ונרצתה ה[ע]ולה לבני ישראל but is a combination of the aforementioned Numbers and Ezekiel 43:18. Ezekiel reports that when the Sanctuary altar was constructed, it was to be purged via חטאת and עולה sacrifices for a week (Ez 43: 25. On the eighth day onward, burnt and well-being offerings will be accepted (רצי) by Adonai, meaning, Werman points out, that the TS author added this to indicate that the עולה is necessarily first, to sanctify the altar.<sup>106</sup>

Previously, following Meshel, the question arose as to how the specific חטאת praxemics could fit with an עולה.<sup>107</sup> The TS answers this in col. 26.1-8. The goat and bull’s fat, along with its meal and libation offerings, are to be burned on the עולה altar. The חטאת, by itself, would not have meal and libation subordinate offerings, so it is interesting that the text goes further than

<sup>105</sup> See, for instance, Schiffman and Vroom for detailed reviews of both the scrolls. Schiffman and Gross, 78-81; Vroom, *The Authority of the Law*, 112

<sup>106</sup> Cana Werman, “על מועדי הכפרים במגילת המקדש,” *Megillot* 4 (2006): 103.

<sup>107</sup> See note 8, above.

Numbers 29 in its incorporation of the bull and goat into the עולה category. Schiffman finds that what is seen in the Yom Kippur ritual is true for the other TS festivals: the author of this section has worked to extend the עולה into various new festivals. Milgrom posits that the עולה is the more ancient ritual, but was “usurped” by the sacrifices devised to purge the tabernacle of contaminations.<sup>108</sup> This fits with Lev 16, where the חטאת is the principle ritual. The evidence of the TS, then, provides evidence of a shift in world-view.

Another shift is signaled by the use of רצה. Werman, Milgrom, and Schiffman, point to how the term רצה replaces כפר.<sup>109</sup> Schiffman notes that the idea of atonement does not include a moral or inner sense, rather it is efficacious. By performing the sacrifices, the people of Israel (בני ישראל) are accepted, and a bond is formed between God and Israel.<sup>110</sup> Schiffman links this connection to the stated purpose of the House, where God will cause his name to dwell. While Sommer observed that the connection in the Deuteronomistic literature between humanity and the divine was through calling on the Name in prayer, here, in the Temple Scroll, we see the human-divine relationship formed through the link between sacrifices properly done and the Name that will continue to dwell in the House. In both theologies, the Name mediates between God in heaven and people on earth.

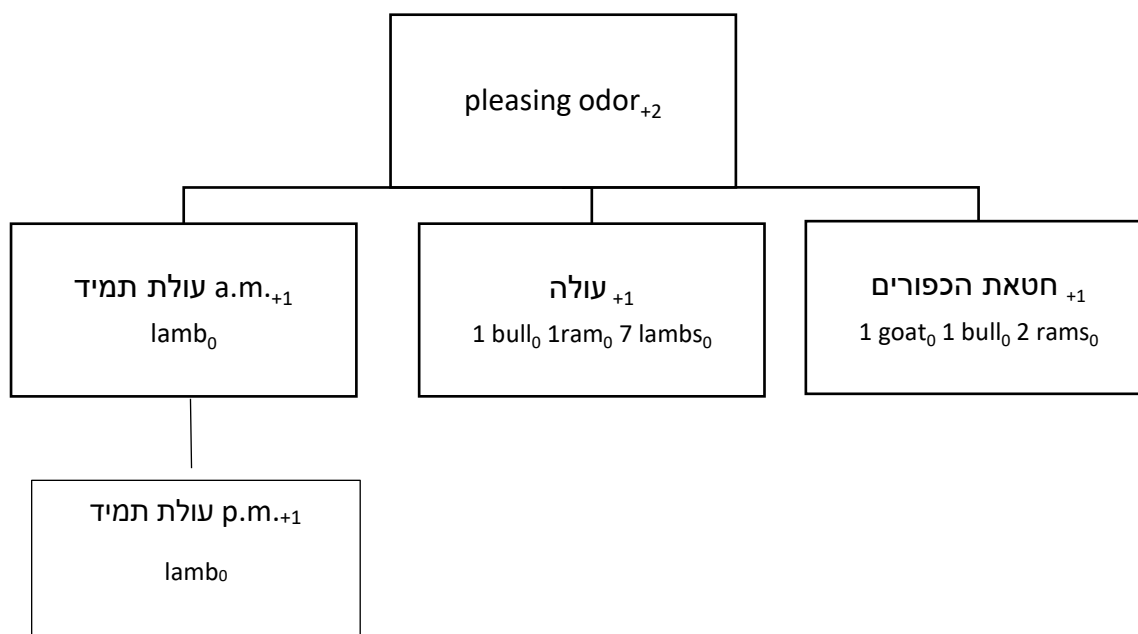
The following chart omits the jugations. The scroll alludes to the “laws” for them, meaning the amounts specified in Exodus for wheat, oil, and drink. The joining of these with the fat of the bull and goat, as noted above, creates a more complex jugation account.

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<sup>108</sup> Milgrom, *Leviticus 1-16*, 176.

<sup>109</sup> Werman, “על מועדי הכפרים במגילת המקדש” 104; Milgrom, *Leviticus 1-16*, 175; Schiffman, *Courtyards*, 26; Schiffman and Gross, *The Temple Scroll*, 87.

<sup>110</sup> Schiffman, *Courtyards*, 26.



The Temple Scroll makes a number of innovations. While some have characterized the halakhah as an homogenization of conflicting material or unclear biblical material, the section on Yom Kippur goes well beyond that. First, it subordinates the חטאת, the primary offering of Lev 16, and renders the fat of the formerly חטאת animals as jugation elements. Evidence points to placing this sequence in the morning: if Levine is correct in supposing that the Numbers account followed Second Temple practice, and that was in the afternoon, it would mean that the TS is staking a position that is contrary to Jerusalem. Second, it increases the number of rams to three. The two rams of the עולה in Leviticus are slaughtered in the TS sequence in the same ritual order as Leviticus, right after the Azazel goat is sent into the wilderness. Thirdly, like Jubilees, it uses רצה instead of כפר, indicating a relationship between the community and the deity.

Earlier, Aharon Shemesh was quoted as remarking that the TS authors, by closing the festival section with a reference to the Name, brings his theology “one step toward the

Deuteronomic doctrine.”<sup>111</sup> The first part of this section attempted to lay out a discourse behind Deuteronomic thought. This included how the Levite and Aaronide theologies developed in tension with each other. The E source, as Haran has depicted, extended holiness from the mishkan to the camp. That element is implicit in the link between the people of Israel and the deity. But it is also made explicit by the intensification of the biblical rites. Not only are elements of Leviticus and Numbers combined, they are interwoven into new forms. A similar complexity has been documented in the Scroll’s treatment of ritual purity legislation.<sup>112</sup> While “spheres” of holiness range in the sources from the tabernacle as the most holy in P, to the land of Israel in H, it is interesting how the Temple Scroll on Yom Kippur posits, at col. 27:4, that the sacrifices are “accepted,” rather than the Priestly idea that they “expiate.” The discourse on “acceptance” includes a theology of repentance (e.g. Deut 28: 20), in contradistinction to ritual-focused Priestly stratum. By including the heavenly response to sacrifices offered on behalf of all Israel, holiness extends to the community. The עולה, meant to appropriate the deity through smell, fits this paradigm.

#### **F. The Dispute Regarding the עולה Offering**

The preceding surveys of biblical and Second Temple literature attempt to form a necessarily partial archaeology of discourse from which to understand the stakes in the dispute between R. Akiva and R. Eleazer in m. Yoma 7.3. For the sake of ease, here again is the pertinent passage:

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<sup>111</sup> Shemesh, “The Holiness,” 374.

<sup>112</sup> Werman, “The Price of Mediation,” 393.

ג. ואם בבגדי בוץ קרא קידש  
ידיו ורגליו ופשט ירד וטבל עלה  
ונסתפג הביאו לו בגדי זהב ולבש  
קידש ידיו ורגליו יצא ועשה את  
אילו את איל העם שבעת כבשים  
תמימים דברי ר אליעזר ר עקיבא  
אמ' עם התמיד של שחר היו קריבים  
אבל פר העולה ושעיר הנעשה בחוץ  
היו קריבים עם התמיד של בין  
הערבים.

3. And if he reads in linen clothing, he sanctifies his hands and his feet and undresses, goes down and immerses, goes up and dries himself. They brought him gold clothing and he washes, sanctifying his hands and feet. He went out and sacrificed his ram and the people's ram, the seven unblemished male sheep: the words of R. Eliezer. R. Akiva said: they used to be sacrificed with the daily morning offering but the burnt offering ox and the male goat, done outside, was sacrificed with the daily afternoon offering.

The passage is situated at the end of a sacrificial sequence that can be outlined thus:

Yoma 3.4	עולת תמיד
3.5	Incense offered betw blood and limb offering
3.8	Blesses ox (1 <sup>st</sup> time)
4.1	Draws lots for goats
4.2	Blesses ox (2 <sup>nd</sup> time)
4.3  5.1  5.3	<p>Ox slaughtered in courtyard</p> <ul style="list-style-type: none"> <li>• Blood collected in basin, stirred</li> <li>• Coal and incense from courtyard altar brought behind curtain of Holy of Holies</li> <li>• Filled chamber with smoke</li> <li>• Short prayer in outer chamber</li> <li>• Collects bowl of blood &amp; brings to Holy of Holies</li> <li>• Blood sprinkled on altar</li> </ul>
5.4	<p>Goat slaughtered</p> <ul style="list-style-type: none"> <li>• Blood collected</li> <li>• Blood sprinkled on H of H altar*</li> </ul>
5.5	<p>Combined ox &amp; goat blood applied to the Altar Before the Lord</p> <ul style="list-style-type: none"> <li>• Leftover blood poured on the western base of outer altar</li> <li>• Leftover blood from outer altar poured onter souther base</li> <li>• Leftover blood mix and drain into the Kidron Valley</li> </ul>
6.2	<p>Blesses Azazel goat</p> <ul style="list-style-type: none"> <li>• Priests and people kneel and prostrate</li> </ul>
6.7	Ox & Goat burned on outer altar

From the above it can be seen that the mishnah follows Lev 16. The asterick signals R. Yehuda's disagreement: he says that goat and ox blood were alternately sprinkled. This contradicts the Levitical account. The mishnah adds the morning תמיד (the afternoon offering is noted in m. Yoma 7.4). If the dispute between R. Eliezer and R. Akiva had not been inserted, the only עולה would be the two rams, offered at the same point as the Leviticus account positions it. Thus, there would have been a clear distinction between חטאת and עולה rituals, unlike Numbers 29, where the חטאת הכפורים is part of the עולה sequence. If we follow Levine, who claims the חטאת הכפורים is described in Lev 16: 12-19, then Yoma's narrative of blood application is also a חטאת הכפורים, and differs only in that, instead of a expiation of the Tent of Meeting (Lev 16:16), the mishnah has the leftover blood poured on the base of the outer altar, ultimately to run into the Kidron Valley. This would seem consonant with Ex 33:7, which places the Tent outside of the camp.

The problem that the dispute raises mirrors the ambiguity of Numbers 29. R. Eliezar supplements the Leviticus' rams with the Numbers' seven lambs. On a practical basis, one would assume that it is now afternoon, given what the mishnah has outlined as the day's events so far. But it is R. Akiva who completes the Numbers' command by including the ox and male goat. We have noted that Numbers is actually unclear as to whether the עולה animals are added to the morning or evening תמיד lamb. R. Akiva seems to split the difference by saying that "they" (the 2 rams and seven lambs) were brought in the morning, as well as the ox. He then moves the Numbers' חטאת goat—presumably an additional one, since the Yoma account already paired its חטאת goat with the bull—to the evening rites, but physically separates the חטאת from the תמיד. In Yoma, R. Akiva seems preciently to concur with Schiffman and Werman that these עולה animals were done in the morning. His account could be close to the Temple Scroll in this

matter, with the exception that he retains the distinction between חטאת and עולה. Put in relation to the narrative as constructed, his tradition overturns the order that the mishnah has established.

The Tosefta is another text within the field of tannaitic discourse. Tosefta Kippurim 3.19 reports that both rabbis couple the ox and goat, implying a חטאת הכפורים. While Akiva placed the ox and goat in the afternoon עולת תמיד in the mishnah version, the tosefta version relates that Eleazer understands the ox and goat to be offered during the morning עולת תמיד. The tosefta thus has Eleazer increasing the goat/ox pairs. The Tosefta's account of R. Eliezer uses the word נעשה, prepared, not קריבין, sacrificed, raising the question of whether his morning goats are the same goats that will later be designated as "for YHWH" and "for Azazel".<sup>113</sup> Here's the Tosefta:

ר' ליעזר או' כך סדר הקרבנות היו הקריבין פר העולה ושעיר הנעשה בחוץ היו קריבין עם תמיד של שחר ואחר כך פר ושעיר הנעשה בפנים ואחר כך אילו ואיל העם ואחר כך שבעת כבשים תמימים

"R. Eliezer says, this is the order of sacrifice: an ox for burnt offering, and a goat which is done/prepared outside, are sacrificed with the daily morning offering. After that, an ox and goat are done/prepared inside [the Temple], and after that, his ram and the ram of the people, and after that, seven unblemished sheep."

The Tosefta goes on to report R. Akiva's opinion:

ר' עקיבא או' פר העולה ושבת כבשים תמימים היו קריבין עם תמיד של שחר. שנאמר: מלבד עולת הבקר אשר לעולת התמיד ואחר כך פר ושעיר הנעשה בפנים ואחר כך שעיר הנעשה בחוץ. שנאמר: מלבד חטאת הכפורים ועולב התמיד ומנחתה ונסכיהם ואחר כך אילו ואיל העם.

"R. Akiva says: an ox for a burnt offering and seven unblemished sheep were sacrificed with the daily morning offering. As it says: 'in addition to the morning burnt offering which was for the daily burnt offering' (Numbers 28:23). After that an ox and a goat were prepared inside, and after that a goat was prepared outside. As it says: 'besides the purification offering of

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<sup>113</sup> Saul Lieberman, editing the Tosefta, would seem to confirm a translation of נעשה as "prepare" because he suggests that the priest is laying his hands on the goats in blessing. Saul Lieberman, ed., *The Tosefta*, vol. 2 (New York: The Jewish Theological Seminary of America, 1962), 248, n. 89. Lieberman also calls them "מוספים לתמיד" since they are the purification component of the daily offering. Lieberman discusses the rams in his commentary on the Tosefta, תוספתא כפשוטה. He says that the "ram for the people" is the one ram listed in Numbers 29:8, a claim that implies that Numbers 29 lies beneath the Leviticus text. Lieberman cites Sifra Aharei Mot, parsha ב, where Rabbi Yehuda haNasi states that R. Eliezer has added the ram from Numbers to the ram in Leviticus. This tradition is also cited in b. Yoma 70b. Saul Lieberman, *תוספתא כפשוטה: באור ארוך לתוספתא*, vol. 4 (New York: The Jewish Theological Seminary of America, 1962), 803.

expiation and the burnt offering of the daily and meal and their drink offerings' (Num 29:11), after that his ram and the people's ram."

A third opinion is added by Kippurim, without specifying which animals are meant:  
ר' יהודה או' השם ר' ליעזר: אחד קרב עם תמיד של שחר וששה קריבין עם תמיד של בין הערבים.

"R. Yehuda says in the name of R. Eliezer: one is offered with the daily morning sacrifice and 6 offered with the daily evening sacrifice."

With the exception of the quote from Num 29:11, none of these opinions mention the supplementary offerings, what the Temple Scroll referred to as the law or rule. It is unclear here, in the tannaitic texts, whether jugations are trace elements understood at the mention of an עולה animal, or whether this is being deliberately de-emphasized. Still, these rabbinic traditions stand in sharp contrast to other texts, particularly the Aramaic Levi Document, for whose author the sacrificial accompaniments seem paramount.

This chapter began by asking how the rabbis decoded ritual elements of earlier texts. Seth Kunin, it will be recalled from the Introduction, proposes that ritemes, the ritual equivalent of phonemes, act as signals when they emphasize or de-emphasize. We have seen, for instance, how in the Temple Scroll, the fat of the חטאת offering was added to the the regular עולה jugates. More broadly, Numbers incorporated the חטאת into the sequence for the עולה, while Leviticus keeps a distinction. The rabbis turn their attention from jugation to praxemics. Meshel defines this category as: atomact (physical acts like slaughter, blessing), agent, object manipulated, target, location, and time.<sup>114</sup> The depiction of the חטאת offerings emphasizes several of these movements, and the next chapter will focus on blessings and immersions. The עולה's biblical time ambiguities pose a particular problem for the rabbis.

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<sup>114</sup> Meshel, "Toward a Grammar," 141.

Rabbi Akiva's assertion, across the mishnah and tosefta, that eight lambs should be sacrificed in the morning, holds a particular meaning. Werman, in commenting on the Temple Scroll, points to Ez: 43 as requiring sacrifices for sanctifying the altar. Akiva's Tosefta statement hews closest to this, by requiring both the ox and the lambs in the morning. In this regard, his thinking is closer to Priestly traditions. Mishnah Yoma's reading of Leviticus, however, would be upended if either the Akiva tosefta or mishnah tradition were enacted, as he would also place the rams in the morning, according to the mishnah's report of his teaching. He seems to conserve and upend in this matter. Further, by upholding a separation between the קטאת and עולה, as does Yoma more generally, he rejects the Second Temple trend towards an emphasis on the עולה.

Of the texts reviewed above, the Temple Scroll is the one that is the most innovative in privileging of the עולה. It, along with Jubilees, positions itself as Sinaitic revelation. In effect, it says that its innovation is actually the halakhah that was given at Sinai. By claiming a divine origin, such discourse attempts to silence any response from those who hear it. The author of m.Yoma constructs a narrative sequence that actively elicits response, demonstrated by the fact that it includes views contrary to its sequencing, such as R. Akiva's. R. Eliezer, whose view on the time of the עולה follows the presentation of the Levitical order that the mishnaic narrative presents, still is given a voice that challenges, not the timing but the animals. In his view, at least some of the Num 29 animals should be added to the rams. Authority is relocated from Sinai to dialectic—a dialectic that openly challenges its own presentation.

In this reading, the arranger of the text presents his own view by way of his composition, without adding an explicitly anonymous voice. But if that view seems to be more faithful to the biblical, the inclusion of an older Priestly tradition, as Akiva's position, shows an author who

recognizes that the strength of the rabbinic tradition will lie in maintaining a certain discursive tension.<sup>115</sup>

Pragmatic linguists look for implicatures. The texts that we have reviewed supply quite a few for the עולה: as a gift of pleasing aroma, it can elicit a favorable response from the deity; as an offering that includes purgative components, it can either retain God's presence or God's Name within the community; it epitomizes the right use of blood; it establishes a relationship between human and divine. Acting as branches from the stems, the textual discourse generates practices such as immersion rituals, prayers, blessings, vows, and ethical deeds.

The next chapter will examine two phenomena that were given prominence in Second Temple texts and that are featured prominently in Yoma, immersion rites and blessings. I propose that the mishnaic narrative places these rituals within the larger narrative as part of a process of a communal reimagination of atonement.

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<sup>115</sup> The idea that the rabbis adopted some of the views of their disputants concludes Shemesh's analysis. He understands Akiva as representing an "underground stream" of priestly tradition in the way that he interprets. Shemesh, *Halakhah in the Making*, 140.

### Chapter Three: Ritual Narrativity

Daniel Boyarin's groundbreaking text on midrash, *Intertextuality and the Reading of Midrash*, proposed that the rabbis used verses from the Bible as *parole*, or paradigmatic units, in the construction of a new *langue*.<sup>1</sup> I am proposing something slightly different for Mishnah Yoma. Instead of units of language—such as the midrashic biblical verse—ritual units, or ritemes, can be seen to be lifted from biblical and extra-biblical discourse strata and privileged in Yoma's narrative. Further, I suggest that the particular ritemes chosen are the outcome of gaps in earlier stratum of discourse, where processes of inference have privileged certain actions.

The previous chapter established a discourse for the dispute between R. Eliezer and R. Akiva. Two major themes could be recognized by a reader of Mishnah Yoma's overall narrative. Yoma deviates from the Levitical account in several ways, but perhaps most distinctly in prescribing 11 immersions to Leviticus' three, and adding 18 instances of washing of the High Priest's hands and feet. Yoma also adds three repetitions of a petitionary prayer, as well as a liturgical element. If we were to follow Brandom's theory, as outlined in the Introduction, it could be stated that these ritemes, in their new setting of the mishnah, function implicitly, providing a "proposition" from the necessary rule language of divine speech that is non-sacrificial and that, through multiple repetitions, act to modify sacrificial ritemes.

Chapter Two documented that over time, additions of practices to rituals have appeared. Thus, purification rites for priests were multiplied, oaths were privileged in Jubilees, and the relationship between humanity and the deity is re-imagined in prayer practices and in contextual

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<sup>1</sup>*Langue* and *parole* are terms borrowed from Saussure. See my Chapter Two for a brief development of thought that leads from Saussure's linguistics to some ritual theorists. Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Eugene, OR: Wipf and Stock Publishers, 2001), 29; Ferdinand de Saussure, *Course in General Linguistics*, ed. Charles Bally and Albert Sechehaye, trans. Roy Harris (LaSalle, Ill: Open Court, 1986).

definitions of כפר.<sup>2</sup> While these texts relate actions of priests (or priest-like actions, in the case of Noah in Jubilees), the juxta-position of non-sacrificial acts like an oath or prayer or ritual bath with sacrificial acts not only carries substitutional value, it opens the acts that have been in the domain of priests to non-priestly actors.<sup>3</sup> However, if we are to follow Wilfrid Sellars, who claims that rules live in behavior, we have to recognize that oaths, prayers, and immersions were practices attested in the biblical literature for the community.<sup>4</sup> In the following, we will look at immersion and prayer as two practices that were always a part of non-priestly practice, but were amplified in narratives of priestly acts, thereby imputing the special power of the Temple to rituals performed without a Temple.

#### **A. Washing and Immersion in Three Texts**

Leviticus 16 proscribes 3 washings. Below is the chart found in Chapter Two, with the washes added in red.

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<sup>2</sup> Chapter One documented differences in the meaning of כפר.

<sup>3</sup> Chapter One details one instance of oath-keeping in Lev 5. See the citation to Hannah Harrington's documentation of immersion requirements for ritual impurity in Chapter Two, footnote 30. Prayer, of course, is widely reported throughout the biblical corpus. The placement of a petitionary prayer with priestly sacrifice is introduced in Chapter Two in a discussion of 1 Kings 8.

<sup>4</sup> Wilfrid Sellars, "Language, Rules, and Behavior," in *John Dewey: A Philosopher of Science and Freedom, a Symposium*, ed. Sydney Hook (New York: Dial Press, 1950), 315.

16:3	Bull for חטאת Ram for עולה	Aaron's offering for himself and his household, neither offered yet
16:4	Wash (רחץ)	
16:5	2 male goats חטאת 1 ram עולה	Offerings for the people of Israel (בני ישראל) neither offered yet
16:7	2 male goats	Aaron lets stands before LORD
16:8	2 male goats	Lots determine goats' destinations
16:9	1 male goat for חטאת 1 male goat for release	Designated for LORD Designated for Azazel
16:11	Slaughter of bull חטאת	[Blood,] coals, incense brought to altar behind the curtain
		Blood sprinkled on east side of cover and sprinkled 7x in front of cover
16:15	Sacrifice of goat חטאת	Blood brought & sprinkled in same way
16:16	Blood of Bull & Goat	"altar before LORD": blood on each horn of altar, and 7x on altar
16:20	2 <sup>nd</sup> goat to wilderness	
16:24	Wash	
16:24	Ram עולה Ram עולה	Aaron's ram offered People's ram offered
16:25	Fat from חטאת animals	Turned into smoke
	Hide, flesh, and dung of חטאת	Taken outside & consumed in fire
16:28	Wash	

The Aramaic Levi Document ostensibly relates stories of the biblical Jacob's family, focused on Levi. As such, it does not mention the tenth day of the seventh month, Yom Kippur, nor does it mention the חטאת offering. It does, however, include an extended account of the עולה when Levi is instructed by Isaac on the correct manner in which to make an offering. Below is the outline of the עולה found in Chapter Two, with the immersions in red.

Wash	Put on priestly garments
Wash hands & feet	
Split wood offering	Inspect for worms, burn
Blood	Sprinkle on the walls of the altar
Wash hands & feet	
Salted portions	Bull: offer head, cover with fat to hide blood; neck; two forelegs; thigh with spine of the loin; two hind legs washed with entrails.
Flour mixed with oil	
Wine	Poured after above
Frankincense	Placed on top
Wash	Let no blood cling to your garment
Wash hands & feet	Remove all flesh from the sacrifices
Meat consumption	At home, hide blood in the earth first, before eating meat

The outline for Mishnah Yoma's sacrifices, with the immersions inserted:

Yoma	Immerse (טבל) 5x
3.3	Sanctifies (קידש) hands & feet 10x
3.4	Immerses, dresses, washes hands & feet
3.4	עולת תמיד
3.5	Incense offered betw blood and limb offering
3.6	Sanctifies hands & feet. Undresses. Immersed. Dresses. Washes hands & feet.
3.8	Confesses on ox (1 <sup>st</sup> time)
4.1	Draws lots for goats
4.2	Confesses on ox (2 <sup>nd</sup> time)
4.3	Ox slaughtered in courtyard
5.1	<ul style="list-style-type: none"> <li>Blood collected in basin, stirred</li> <li>Coal and incense from courtyard altar brought behind curtain of Holy of Holies</li> </ul>
5.3	<ul style="list-style-type: none"> <li>Filled chamber with smoke</li> <li>Short prayer in outer chamber</li> </ul>

	<ul style="list-style-type: none"> <li>• Collects bowl of blood &amp; brings to Holy of Holies</li> <li>• Blood sprinkled on altar</li> </ul>
5.4	Goat slaughtered <ul style="list-style-type: none"> <li>• Blood collected</li> <li>• Blood sprinkled on H of H altar</li> </ul>
5.5	Combined ox & goat blood applied to the Altar Before the Lord <ul style="list-style-type: none"> <li>• Leftover blood poured on the western base of outer altar</li> <li>• Leftover blood from outer altar poured on southern base</li> <li>• Leftover blood mix and drain into the Kidron Valley</li> </ul>
6.2	Confesses on Azazel goat <ul style="list-style-type: none"> <li>• Priests and people kneel and prostrate</li> </ul>
6.7	Ox & Goat burned on outer altar
7.3	If he reads from the Torah in linen garments, he sanctifies hands & feet, undresses, immerses. Dresses in gold garments, sanctifies hands & feet.
7.3	עולה
7.3	Sanctifies hands & feet. Undresses. Immerses,. Dresses in linen, sanctifies hands & feet.
7.4	Removes shovel from Holy of Holies.
7.4	Sanctifies hands & feet. Undresses. Immerses. Dresses in gold.
7.4	Lights incense & lamps in Holy.
7.4	Sanctifies hands & feet. Undresses. Immerses. Dresses in personal clothing.
7.4	Goes home for feast.

As can be seen quite readily, there are three washings in Leviticus, two in ALD, but with the addition of three hands and feet washings (one of which occurs separately from any other washing), and eleven immersions in Mishnah Yoma, along with nineteen requirements to sanctify the hands and feet. The Aramaic Levi Document is the only source that delineates

washing as part of the עולה,<sup>5</sup> although Yoma surrounds this sacrifice with immersions. Ex 30: 17-21 stipulates washing the hand and feet before a burnt offering, but not during the sacrifice itself. That each document uses different terms will be part of the discussion below.

An early attempt to explain Israelite sacrifice occurs in Edmund Leach. He famously develops the idea of a boundary between the sacred and profane, a liminal zone that successively marks the Temple spaces leading to the Holy of Holies.<sup>6</sup> His theory is compelling in that the cleansing activities in all three documents surround offerings, especially before entering the Holy of Holies. It could be asserted that the High Priest, entering into the dwelling place of the deity, enters a “timeless” place—the water—before encountering holiness.<sup>7</sup> Such explanatory views, however, separate us from the discourse within which the text was produced.

The Aramaic Levi Document, ALD, like Leviticus, requires washing at the beginning of the sacrificial sequence. But the additional requirement, to wash the hands and feet, follows the stipulation in Ex 30: 17-21, which says that the hands and feet must be washed before entering the Tent of Meeting. Understanding the radical increase in Yoma thus begins here, in the ALD. Lawrence Schiffman notes that the ALD sacrifice in general (even though only an עולה), seems to follow the Day of Atonement procedures. In fact, he finds that Mishnah Yoma shares characteristics with ALD.<sup>8</sup> He notes that the mid-sacrifice washing of the hands and feet would be called sanctification/קידוש in later, rabbinic literature.<sup>9</sup>

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<sup>5</sup> The various biblical mentions of the עולה, outside of Yom Kippur and ordination of Aaron and his sons, do not mention washings.

<sup>6</sup> Edmund Ronald Leach, *Culture & Communication: The Logic by Which Symbols Are Connected* (New York: Cambridge University Press, 1976), 81-93.

<sup>7</sup> Leach, 34-5.

<sup>8</sup> Lawrence H Schiffman, “Sacrificial Halakhah in the Fragments of the Aramaic Levi Document from Qumran, The Cairo Genizah, and Mt. Athos Monastery,” in *Reworking the Bible: Apocryphal and Related Texts at Qumran*, ed. Esther Chazon, Devorah Dimant, and Ruth Clements (Leiden: Brill, 2005), 182.

<sup>9</sup> Schiffman, 184.

Schiffman's insight is interesting in view of the discussions around the name Levi and the Levites in connection to the Aramaic Levi Document. Several scholars have noted similarities between the characteristics of the E source and the Deuteronomistic history—as reviewed in Chapter Two—and elements of the ALD.<sup>10</sup> It will be the position, in the following, that the ideology expressed in the manuscript does echo some key concerns of previous generations. Moreover, the liminal position that the Levite personnel occupied in the third century BCE seems to have provided motivation for a certain amount of innovation. By reviewing the current state of the research into where the Levites fit within the Temple hierarchy, as well as textual evidence of how the position of the Temple fit on the broader geopolitical stage, a tentative theory can be proposed as to why purity concerns came into prominence.

### **1. A Levite Setting?**

The question of whether and how a Levite viewpoint is expressed in the Aramaic Levi Document must begin in the gray history of the Persian Yehud. This era's surviving documents, beyond the Elephantine papyri, are limited to 1 Esdras, Ezra-Nehemiah, and Chronicles even as epigraphical evidence points to the inclusion of some returnees in Persian administration and archaeological evidence points to a modest rebuilding effort.<sup>11</sup> Ezra 3: 2 records that Jeshua, son of Jozadak, built an altar, before even the foundation for the future Temple had been laid. From this it would seem that the author of Ezra wished to show a continuity from the Zadokite line of priests who controlled the Temple in 586, to the new Temple. The desire to narratively link the

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<sup>10</sup> Kugler, following Milik, has written a number of articles on the subject. George Brooke, along with Michael Stone and Jonas Greenfield, worked with the Qumran finds. Angel and Werman consider a number of ideological points in ADL that overlap with Deuteronomistic concerns. Kugler, *From Patriarch to Priest*; George Brooke, "Levi and the Levites in the Dead Sea Scrolls and the New Testament," *Mogilany*, 1989, 105–29; Joseph Angel, *Otherworldly and Eschatological Priesthood in the Dead Sea Scrolls* (Leiden: Brill, 2010); Cana Werman, "Levi and the Levites," *Dead Sea Discoveries* 4, no. 2 (1997): 211–25.

<sup>11</sup> David McLain Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011), 204.

new building with the First Temple's construction can be seen in 1 Chr 10 through 2 Chr 34, a roughly contemporaneous fourth century work that details David and Solomon's plans and construction. Despite the authors of Ezra and Chronicles having different purposes, they recognize the rhetorical value in connecting the present to a past that must have carried a nostalgic value.

Scholars are divided in whether Esdras, Ezra-Nehemiah and Chronicles can be considered to be part of a unified corpus (Frank Moore Cross, for instance, suggesting three distinct parts), but there is a consensus that the genealogies of 1 Chr 1-9 date to the fourth century.<sup>12</sup> Both Cross and Levin note a dividing line between Ezra's polemic against foreign wives and the Chronicler's silence, even as the latter notes Judahite kings who take on foreign wives.<sup>13</sup> Levin suggests that returnees like Ezra encountered a settled population and, while the returnees were part of the new Persian power structure, they were not representative of Judean society.<sup>14</sup> Chronicles, on the other hand, has been identified as a Levite composition.<sup>15</sup> While the rejection or acquiesce of foreign wives proves a difference between Chronicles and Ezra-Nehemiah, ALD's foundational story is Levi's slaughter of the men of Shechem, which is the act

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<sup>12</sup> Yigal Levin directs the reader to the current debate. Carr divides the literature into two: the Nehemiah memoir "covers events from 445-25 BCE" and the Rebuilding-Ezra Narrative to the later Persian or early Hellenistic period. He qualifies this later date by its relation to Chronicles. Cross, who sees a blend of Chronicles and Ezra-Nehemiah in each of his three divisions, posits the turn of the fourth century while Freedman represents an outlier position, dating to the sixth century. Yigal Levin, "Who Was the Chronicler's Audience? A Hint From His Genealogies," *Journal of Biblical Literature* 122, no. 2 (2003): 229; Carr, *The Formation of the Hebrew Bible*, 208; Frank Moore Cross, "A Reconstruction of the Judean Restoration," *Journal of Biblical Literature* 94, no. 1 (1975): 4-18; David Noel Freedman, "The Chronicler's Purpose," *The Catholic Biblical Quarterly* 23, no. 4 (1961): 436-42.

<sup>13</sup> Cross assigns the genealogies to Chr<sub>3</sub>, and includes Nehemiah in this strata. His citations for intermarriage come from Neh 13 (and Samaritan Papyri, as well as Josephus). Levin cites intermarriage as part of the evidence that Ezra's agenda differs from the Chronicler's. Cross, "A Reconstruction," 6; Levin, "Chronicler's Audience," 238.

<sup>14</sup> Levin, "Chronicler's Audience," 240.

<sup>15</sup> For a discussion of redaction theories for Chronicles, see Schniedewind. Of the literature that discusses a Levite background for Chronicles, Blenkinsopp's work links directly to the issues I will discuss below. William M. Schniedewind, *The Word of God in Transition: From Prophet to Exegete in the Second Temple Period* (Sheffield: Sheffield Academic Press, 1995), 163-188; Joseph Blenkinsopp, *A History of Prophecy in Israel* (Louisville, KY: Westminster John Knox Press, 1996), 254.

that wins him the priesthood. While ALD picks up several themes from Chronicles, mixed marriage is not one of them. In the following, the genealogies of 1 Chr 1-9 will first be compared to the genealogy of ALD, before turning to sections of the work that discuss Levitical singers.

Antti Laato's detailed study of the genealogies in 1 Chronicles notes discrepancies between its lists which suggest that different traditions have gone towards the book's construction. Notably, he asserts that 1 Chr 6: 16-38 comprises the oldest layer, "Tradition A."<sup>16</sup> This list traces each of Levi's sons' descendants, but he cuts the Aaronide section, lines 34-38, out, when he locates Tradition A as the Chronicler's perspective. The Aaronide section would thus fit into what he called the "Chronistic Historical Work" that is composed of redactional and revisionist material.

Levin, using the literature of anthropological work with oral genealogies, notes that revisions of lists is a formal characteristic called *fluidity*. Laato's "Tradition B," which incorporates Samuel into the Levite genealogy, is also a product of fluidity. Other formal characteristics are *segmentation* and *depth*.<sup>17</sup> Segmentation shows the connections between individuals, including how they connect to the broader society. 1 Chronicles has linear lists (A, son of B, son of C), but it also breaks these lists with information on where some individuals served, where their lands were, etc. Depth, how many generations are included, extends further than a typical oral memory, which is usually about five generations, at the most. The fact that the Chronicles genealogies extend further is a mark of their written form.

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<sup>16</sup> Antti Laato, "The Levitical Genealogies in 1 Chronicles 5-6 and the Formation of Levitical Ideology in Post-Exilic Judah," *Journal for the Study of the Old Testament* 62 (1994): 82.

<sup>17</sup> Levin, "Chronicler's Audience," 231-2.

The genealogy in the Aramaic Levi Document is placed after Isaac's sacrificial instructions. While the genre of 1 Chronicles 1-9 is genealogy, Levi's telling of his descendants means that this genealogy is within the genre of a narrative. Its depth expands, in places, to biographical detail. Similar to an oral tradition, it relates three generations—his marriage, their children and grandchildren—corresponding to 1 Chr 6: 1-4. It differs from Laato's Tradition A, not just in length, but in the names it attributes to the sons of Gershom and Merari. The ALD's genealogy favors Kohat and his line. It informs the reader that I (Levi) "saw in my vision that he [Gershom] and his seed will be thrown out from the chief priesthood, his seed will be."<sup>18</sup> For Kohat, in contrast, Levi saw that "to him would belong the high priesthood."<sup>19</sup> Levi, in the Document, finds that Merari is "about to die."<sup>20</sup>

Kohat's progeny are listed as Amram, Izhar, Hebron, and Uzziel, which matches both 1 Chr 6: 3 and 1 Chr 5: 28, as well as Ex 6: 18-20 and Num 3: 17-19).<sup>21</sup> It does not match 1 Chr 6:7, which lists Amminadab and his descendants. Laato notes the problem in Chronicles and posits two different variants of the lineage attributed to Korah: he concludes that the 1 Chr 6: 7 is part of a lineage which contrasts with 6: 19-23 and ultimately distinguishes Levites and singers.<sup>22</sup> In ALD, none of Levi's great-grandchildren are listed, although Levi notes that

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<sup>18</sup> Translation from the Greek, Mt Athos 18, 2, by Drawnel. Henryk Drawnel, *An Aramaic Wisdom Text from Qumran: A New Interpretation of the Levi Document* (Leiden: Brill, 2004), 143.

<sup>19</sup> Both Drawnel and Greenfield, et. al. reconstruct the next phrase as "he and his seed will be the beginning of kings a priesthood for all Israel." These lines are found in both the Mt. Athos 18,2 ms and the Cambridge copy of the ms found in the Cairo Geniza. Drawnel, 147; Jonas C. Greenfield, Michael E. Stone, and Esther Eshel, *The Aramaic Levi Document: Edition, Translation, Commentary* (Leiden: Brill, 2004), 95.

<sup>20</sup> Drawnel, *An Aramaic Wisdom Text from Qumran*, 148.

<sup>21</sup> Laato only discusses the Chronicles passages here. However, both Exodus and Numbers present a genealogy that is the similar to ALD's (as far as it goes). Israel Knohl identifies Num 3 as part of the Holiness strata that extends from 1:1 to 10:28. Baruch Levine remarks that the stratification of duties in this section of Numbers does not appear in either Exodus or Leviticus. Laato, "Levitical Genealogies," 80; Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Winona Lake, Ind: Eisenbrauns, 2007), 71-2; Baruch A. Levine, *Numbers 1-20* (AB 4; New York: Doubleday, 1993), 65.

<sup>22</sup> See note 16, above, and Levine's observation of Numbers. Laato, "Levitical Genealogies," 80.

Amram “will rise up the people from the land of Egypt,” which would seem to be an allusion to Moses, Aaron, and Miriam.

The conceit of ALD is that it is written by Levi. Not only does he narrate that he knows his progeny to the third generation, but he lists his own death as occurring at the age of 137, 43 years after he says that Amram was born. We are thus left with a genealogy that favors Kohat and Amram, but does not record the name of Amram’s son Aaron, the man from whom the Oniad priests claim descent at the time of the ALD’s composition.

Michael Stone has used the Aaronide thrust of the lineage in ALD as part of a thesis that the Document portrays a theology that locates the cause of the world’s problems in the actions of angels.<sup>23</sup> He connects the Aaronide priesthood, which is the milieu of the ALD author, with a fleeting reference to a Book of Noah that occurs in Drawnel’s line 57. While Stone admits that this book has not been found, despite references to it in a number of sources, his interest lies in how the line connects the prohibition of eating blood to the priestly tradition. Line 56 should be read with line 57. It is only extant in Greek. Here is Drawnel’s translation:

**56** And when you are at home yourself to eat any flesh, hide its blood in the earth first before you eat from the flesh and you will not eat of the blood any longer.

**57** For thus my father Abraham ordered me, because thus he found in the writing of the Book of Noah concerning the blood.<sup>24</sup>

These lines partially echo Gen 9:4, which prohibits the consumption of blood. Lev 17: 13 requires that animals killed for food must have their blood poured out and covered. Dt 12: 16, in contrast, does not stipulate that blood must be covered, only that it must not be eaten: it is to be poured out into the ground. Lev 17 was composed by the Holiness school and as Jacob

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<sup>23</sup> Michael E. Stone, “The Axis of History at Qumran,” in *Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in Light of the Dead Sea Scrolls*, ed. Esther Chazon, Michael E. Stone, and Avital Pinnick (Leiden: Brill, 1999), 148.

<sup>24</sup> Drawnel, *An Aramaic Wisdom Text*, 142.

Milgrom points out, Deuteronomy reverses the prohibitions of the Holiness author, and permits common slaughter.<sup>25</sup> Isaac's proscription resonates with Jubilees 6, discussed in Chapter Two. Covering the blood is stipulated in Jub 6: 7-8, a narrative of Noah. Jubilees and—by the reference to the Book of Noah—ALD both appear to interpret Noahide law through the Holiness school.

Stone's argument is compelling, but his claim that the Document supports the Aaronide lineage rests with these two lines, in contrast to the genealogy which falls short of naming Aaron. Indeed, ALD's central narrative is the vision of Levi that he is a priest and is thus eligible to receive instruction on the sacrifices from Isaac. This narrative challenges the real-world position of the Levites under the Oniads, where Levites assisted the priests and were singers and gatekeepers. The evidence of the genealogy is not strong enough to contend that the document stands as a polemic against the Aaronides, nor does its alignment with the aspects of the Holiness School prove that it stands as testament to the Aaronides.<sup>26</sup> Instead, I would argue a more nuanced position that its authors, Levites serving in the Temple, were a faction that promoted a more stringent purity for the priests serving at the Temple.

The position of singer was not a position without power. As Meir Gertner points out in a 1960 article, the task of chanting the unvocalized text means that a process of interpretation is at work for each word.<sup>27</sup> The scribes had traditions of pronunciation that were transmitted through

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<sup>25</sup> Jacob Milgrom, *Leviticus 1-16* (AB 3; New York: Doubleday, 1991), 28-9.

<sup>26</sup> See Joseph Angel for a summation of positions, including that "most scholars do not detect a polemic against the contemporary priesthood in ALD." My focus on the genealogy differs from Kugler, who claims that the fragment 4QLevi<sup>a</sup>frg.4 was included by the ALD author in his work, while Angel understands it as a polemic from a Levi apocryphon distinct from ALD's point of view. Angel, *Otherworldly and Eschatological Priesthood*, 265, 272; Kugler, *From Patriarch to Priest*, 110, 130.

<sup>27</sup> Meir Gertner, "The Masorah and the Levites: An Essay in the History of a Concept," *Vetus Testamentum* 10 (1960): 246.

a process of memorization and reading,<sup>28</sup> but accentuation, punctuation, and pronunciation in an oral performance can shift meaning. Gertner also notes the Nehemiah text, which states that Levites מְבַיְרִים/explain, מְפָרֵשׁ/interpret, and שֹׁכֵל/instruct, as the “torah” or teaching of God is read. The explanation of the Levites’ role, found in Neh 8: 7-8, was repeated by the tradents of the Palestinian Talmud (3<sup>rd</sup> to 4<sup>th</sup> c. CE).<sup>29</sup> By Nehemiah’s time, translation from Hebrew to Aramaic was part of the interpretive task, but the recognition that singers should teach possibly extends further than the Persian period. Psalm 47, which has pre-exilic words such as עֲלִיָּין/most High and exilic themes such as throne imagery, exhorts the people, in line 8, to sing “understanding”: זָמְרוּ מִשְׁכִּיל. Joseph Blenkinsopp notes that the composition and rendition of music was a form of prophesy.<sup>30</sup> This of course would be a continuation of the Levitical role noted in Samuel.

In the Introduction, it will be recalled that Dan Sperber describes three features of communication: it has to be ostensive (something has intentionally been made manifest to the hearer), it is conveyed through linguistic moods, and there must be an element of belief (the speaker must convey their belief in the situation and they must believe that their audience desires a particular outcome). Gertner’s observation that the Levitical singers employed pronunciation, accentuation, and punctuation in effect describes the singers’ utilization of Sperber’s mood. As a formal feature of oral language, the interpretation of a Hebrew word’s vocalization can convey causation or intensification (such as from ‘break’ to ‘shatter’), as well as active or passive moods. The reader’s decision to locate pauses in a text without breaks also provides meaning.

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<sup>28</sup> Alexander traces an arc from the Second Temple to the Rabbinic period, but suggests that the first phase of instruction was an oral memorization of a passage, so as to know learn the vocalization, followed by deciphering a written scroll. Learning to write was apparently only minimally taught. Philip S. Alexander, “How Did the Rabbis Learn Hebrew?” in *Hebrew Study From Ezra to Ben-Yehuda*, ed. William Horbury (Edinburgh: T & T Clark International, 1999), 81.

<sup>29</sup> Gertner, “The Masorah and the Levites, 248.”

<sup>30</sup> Blenkinsopp, *History of Prophecy*, 254.

While Gertner describes these actions as interpretation, which of course is true, they also are part of a process of inference that involves the singers' reading of the propositional form of their text and enriching its logical form by stretching the meaning. An example that Sperber uses for stretching is if someone says that "X will happen," but through some clue—maybe the urgency in the speaker's voice—the hearer understands that X will happen *very soon*.<sup>31</sup> He claims that understanding the 'very soon' is pragmatically determined from the explicit content of the utterance.

Also in the Introduction, I gave the example of two people, one of whom told the other that it is raining, a remark that resulted in the other grabbing his umbrella as he left the house. The proposition "it is raining" was a visible phenomenon for the speaker (I called her Shayna in the Introduction). It was a manifest fact for the person she addressed, Dave, because he was able to mentally represent what he heard, but had not seen. Sperber, in delineating these criteria, then says that for something to be manifest is for it to be perceptible or inferable. A cognitive environment is both the physical environment and the facts one is capable of being aware of. It can include both correct and mistaken assumptions. He includes memorized information—a point that is particularly pertinent to Late Antique cognition.<sup>32</sup>

When conveying an ambiguous statement like "it is raining," the speaker makes assumptions about the kind of assumptions the other person might make. Shayna, knowing for a fact that it is raining, has to assume that her friend, Dave, wants to go out and that Dave would appreciate learning this ahead of time. Dave, for his part, believes Shayna's utterance to be true, is relevant to his intention to leave right away, and assumes that she tells him this so that he can

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<sup>31</sup> Dan Sperber and Deirdre Wilson, *Relevance: Communication and Cognition* (Cambridge, Mass: Harvard University Press, 1986), 183.

<sup>32</sup> Sperber and Wilson, 37.

take appropriate action. Dave must recognize Shayna's intention for Shayna to effectively communicate her desire, which is, in fact for him to go, but be protected. Sperber characterizes this type of exchange as "ostensive-referential": it consists of the basic layer of information, and an intention made manifest by the information.<sup>33</sup> Miscommunication happens when an intention is not as manifest to the hearer as the speaker had hoped or assumed. Sperber suggests that a more ambiguous proposition requires greater context, forcing the hearer to look for or consider what has not been shared in the basic statement.<sup>34</sup> If Dave, for instance, was unsure of Shayna's intent (does she mean for me to stay home?), he might consider how urgently the baby needed formula, or whether his tennis match could be relocated to the club.

In many ways, the biblical statements on entering sacrificial precincts of the Temple are as ambiguous as the statement "it is raining." The instructions for the עולה in Lev 6:1-4 stipulate that the priest must remove his clothes and don linen garments, but does not mention immersion. However, the preparation for the עולה during the sequence of rituals on Yom Kippur, does require washing prior to the sacrifice, at Lev 16:24. Elsewhere, the anointing ritual for Aaron and his sons requires washing (רחצת אתכם) before putting on their special vestments (Ex 29:4). Ezekiel 44:17, which does not describe a ritual, says that a priest must put on these clothes when entering the inner court (he, too, does not mention bathing, despite following this injunction with a long list of defiling actions). The specific instruction to wash the hands and feet (Ex 30: 17-21) comes after a directive to make a copper laver, which is then followed by its use. Aaron and his sons were to use the laver when they entered the Tent of Meeting and when they approached to turn a sacrifice into smoke for YHWH/ לשרת להקטיר אשה ליהוה. Although not part of a general instruction for an עולה, Ex 30:20 describes the effect of a whole-burnt offering, namely smoke.

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<sup>33</sup> Sperber and Wilson, 53.

<sup>34</sup> Sperber and Wilson, 235.

For the passages that state it, the first ambiguity is the word רחץ, which can mean washing (as in the hands and feet of Ex 30), or it can mean bathing. Because specificity exists in only one of the range of texts at the ALD author's disposal, we can assume ambiguity for him as well. While there is no indication that the authors of the various biblical texts had Sperber's visual experience, because the texts are written as reported divine speech (or, in Ezekiel's case, vision with a supernatural guide), the actions were cognitively manifested to these Priestly writers. If the conclusion that the ALD was written by a Levite singer is correct, we can assume that this individual had visual experience of the עולה sacrifice.<sup>35</sup> Regardless, we can say that it was manifest to him through his knowledge of the sources and, possibly, his milieu.

In reading the biblical passages available to him, a common beginning is the prescription to wear linen clothing. We can say that this is explicit. Some texts include a form of ablution. Can we say that washing the body is implicit in putting on (presumably) clean clothing, even in the texts that do not mention it? Would a Levite singer strive to make explicit what he infers in the texts that do not mention washing? The place to begin is with the texts that either give directions for the עולה or tell how a priest enters the sacred precincts. From that list we can propose what might have been manifest to the Levite author, the priestly garments, but also some assumptions he may have made about this information.

Some assumptions that could have been manifest to the ALD author are:

- Everyday clothes are removed. This has to happen in order to bathe. It is explicit in Lev 6, but not stated in Ezekiel which merely says that "they shall wear linen garments" when they enter the gates of the inner court.
- It is not necessary to remove one's garments to wash hands and feet.
- Some change occurs, whether through washing or different clothing or both, before entering the inner court.
- Linen clothing denotes something.
- Washing denotes something.

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<sup>35</sup> See my Chapter Two, note 25.

The biblical authors entertained certain assumptions when they wrote their passages. Perhaps the author of Lev 6 did not feel the need to mention washing because he expected his audience to infer washing at the mention of changing into linen clothing. By the third century, however, the ALD author could have found the range of statements ambiguous while still participating in what Sperber calls a mutual cognitive environment. For this reason, the biblical statements are still ostensive—more so, individually, less so, collectively. The ALD author solves the ambiguity by asserting that the priest must wash,<sup>36</sup> change into special garments, *and* wash his hands and feet. He thus believes them, recognizing them, not as “rules” in the anachronistic philosophical sense, but divine law, in his worldview. The difference between our “rule” and his “law” might go some way to establish Sperber’s mood, in that “divine law” has an imperative force.<sup>37</sup> By distinguishing washing from washing the hands and feet, he clearly assumes that washing is something more, and expects his audience to infer that he understands a distinction. By explicitly stating both washings, we have to believe that he meant “to alter the cognitive environment of [his] addressees.” In this act of interpretation, he also establishes mood, following Gertner, above.<sup>38</sup>

It remains an open question whether ALD’s author intended “an intensification of the standards of purity found in the Pentateuch,” as Joseph Angel describes it, or merely a way to clear up ambiguity by inclusion.<sup>39</sup>

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<sup>36</sup> He uses a word for wash, סחי, whose meaning may not have been an equivalent to רחץ, which will be discussed in the next section.

<sup>37</sup> The line contains an imperative construction that is rare in extant Aramaic documents from the Yehud. The line reads: הוי סחי במיא, which Greenfield translates as “wash in water.” The word הוי forms a periphrastic imperative with the participle. See his discussion in: Jonas C. Greenfield, “The ‘Periphrastic Imperative’ in Aramaic and Hebrew,” *Israel Exploration Journal* 19, no. 4 (1969): 199–210.

<sup>38</sup> Sperber and Wilson, *Relevance*, 46.

<sup>39</sup> Angel, *Otherworldly*, 272.

To say that the various instructions regarding washing, hands and feet washing, and clothes changing all had relevance to each other in the ALD author's mind, is to recognize Grice and Sperber's criteria of relevance at work. But this third century writer's interpretation cannot be considered a precedent for Mishnah Yoma's prescriptions to wash without considering that the Aramaic Levi Document would seem to be a harbinger of concerns for purity that, in the following centuries, led to extending the sphere of holiness from the Temple to every day practices for some members of the community. Robert Brandom builds upon Wilfrid Sellars' assertion that rules live in behavior, in order to ask how the 'correctness' of a performance is determined. Further, Brandom wonders if norms or correctness can be implicit in a practice.<sup>40</sup> While the lived experience of the ALD author is naturally obscured in the exclusive world of the inner sanctuaries of the Temple, the public world of mikveh immersion that developed in Greco-Roman Israel provides an opportunity to read Yoma within this context.

## 2. Mishnah Yoma's

The Aramaic Levi Document is a third century BCE document, written in the decades after Alexander's conquest. In its author's effort to resolve textual ambiguities, it introduces the word סחי into the discourse of cleansing. This term appears in Lamentations (3:45) as 'scouring' and Ezekiel (26:4) as 'scrape clean'.<sup>41</sup> By the time of the tannaim, and especially as attested by the Jewish Palestinian Aramaic dialect (textual evidence begins around 200 CE<sup>42</sup>), the biblical Hebrew רחץ, with the semantic meaning of wash or bathe, was interpreted in Targum Neofiti to Lev 22:6 to be the Aramaic סחי. Jastrow lists bathing as the correct translation for this linguistic

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<sup>40</sup> Wilfrid Sellars, "Language, Rules, and Behavior," in *John Dewey: A Philosopher of Science and Freedom, a Symposium*, ed. Sydney Hook (New York: Dial Press, 1950), 315; Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, MA: Harvard Univ. Press, 2001), 25.

<sup>41</sup> Francis Brown, Samuel R. Driver, and Charles A. Briggs, *The Brown-Driver-Briggs Hebrew and English Lexicon* (Peabody, Mass: Hendrickson Publishers, 2010), 695.

<sup>42</sup> Paul V.M Flesher and Bruce Chilton, *The Targums: A Critical Introduction* (Leiden: Brill, 2011), 156.

strata.<sup>43</sup> The lexical Hebrew equivalent to the Aramaic word סחי is סחה, which translates as ‘swim’. Using the idea of bathe, in some texts,<sup>44</sup> meant bathing in a river—close to the idea of swimming. Mishnah Yoma, compiling earlier traditions in the early third century CE, uses the term טבל, or immersion, in all instances, except at 8.9, where R. Akiva is quoted uses the word מקוה, in a wordplay that echoes Jer 14:8 and Jer 17:13.

This linguistic data runs parallel to heightened purity concerns among some groups in the Second Temple period. If the writer of the Aramaic Levi Document, or a group in the Temple for which the ALD is representative, penned a document that advocated priestly stringencies such as multiple body washings and the removal of blood-stained clothing, the document’s place in the Qumran library indicates that these ideas gained relevance. Eyal Regev notes that within the secular, non-priestly sphere, purity practices are recorded in Tobit, Judith, pseudo-Aristeas, and the *Third Sibylline Oracle*, dating the phenomena to the first half of the second century.<sup>45</sup> These texts variously call for a state of purity before prayer, after contact with a corpse, and before eating ordinary food. How widespread these strictures were, beyond Qumran, in the late Hasmonean to early Roman period has been a matter of debate. Tannaitic reports of Pharisaic sources as well as the archaeological remains of stone vessels and mikvaot has led scholars to wonder if the Levitical purity articulated was real or aspirational, and whether Tannaitic halakhah represents continuity from earlier practices.<sup>46</sup>

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<sup>43</sup> Marcus Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (Peabody, MA: Hendrickson Publishers, 2005), 971.

<sup>44</sup> Jastrow.

<sup>45</sup> Eyal Regev, “Pure Individualism: The Idea of Non-Priestly Purity in Ancient Judaism,” *Journal for the Study of Judaism* 31, no. 2 (2000): 178.

<sup>46</sup> For an extensive listing of scholarly positions, see: Vered Noam, “The Dual Strategy of Rabbinic Purity Legislation,” *Journal for the Study of Judaism* 39 (2008): 475-6.

The use of a mikveh for purposes other than agriculture can be tracked to their locations in or near homes.<sup>47</sup> Beginning in the first century before the Common Era, these installations appeared throughout Judea, suggesting that they were being used by ordinary householders as well as priests. Yonatan Adler cites finds of 503 mikvaot that can be dated to the early Roman period, from about the time of King Herod through the Bar Kokhba Revolt in 135 CE. These installations were found in Jerusalem (167), the palace complex at Jericho (37), Masada (21), Qumran (11), and in the Judean countryside.<sup>48</sup> As Adler concludes, the “heyday” of mikveh use occurred from 63 BCE to 135 CE, but the relative decline in use after this time period was not because of the destruction of the cultic center (and the need for priests to purify themselves), but rather, the difficult economic and cultural situation entailed in the large-scale relocation of the Jewish population to the North following the defeat of the Bar Kokhba revolt.<sup>49</sup>

The population that moved to the North does not appear to have continued the intense practice of ritual ablution that the archaeological evidence in the South would suggest. In the South, Adler notes that since so many households created a mikveh, it would seem that the residents expected to purify frequently, perhaps daily. He bases this on our own time, where one mikveh is enough to meet the needs of a small community, where child-bearing women utilize

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<sup>47</sup> Archaeologists speak of “stepped pools.” Biblical immersion practice took place in “living water,” defined as the flowing water, preferably a stream. Stepped pools employ a plug that releases water from storage so that a flow is mimicked. The steps down to the center of the pool play a part in the ritual.

<sup>48</sup> See Adler’s “Decline of Jewish Ritual” for a discussion of the sites that can be dated to the Early Roman Period. See “Between Priestly Cult” for a map of these sites and others, that are dated beyond the first century. The preponderance of the mikvaot dated up to 135 CE are located in the low hills of the Shephelah region and the Jerusalem area. Yonatan Adler, “The Decline of Jewish Ritual Purity Observance in Roman Palaestina: An Archaeological Perspective on Chronology and Historical Context,” in *Expressions of Cult in the Southern Levant in the Greco-Roman Period*, ed. Oren Tal and Zeev Weiss (Turnhout, Belgium: Brepols, 2017), 271; Yonatan Adler, “Between Priestly Cult and Common Culture: The Material Evidence of Ritual Purity Observance in Early Roman Jerusalem Reassessed,” *Journal of Ancient Judaism* 7, no. 2 (2016): 234.

<sup>49</sup> Adler rejects the proposal, common to many analysts, that the destruction of the Temple caused a decline in purity observance. In this earlier article, while he considers the historical setting of cultural upheaval in the wake of the 135 defeat, he goes on to propose that the obligatory force of the regulations waned in subsequent decades. Adler, “The Decline of Jewish Ritual,” 273, 277-8.

the facility once a month. In the North, in Sepphoris, Susiya, and Bet Shearim, multiple mikvaot have been uncovered—as well as in a number of other towns.<sup>50</sup> However, the overall conclusion that Adler draws is that the evidence does not support the idea that a majority of the population maintained high purity standards.<sup>51</sup>

The question of who actually built the northern mikvaot has generated a number of responses. As Stuart Miller documents, early studies identified this evidence of purity concerns with a community of priests in Sepphoris that dated from the late Second Temple period.<sup>52</sup> But Miller argues for a “complex common Judaism” with inter-relationships between priests, rabbis, and ‘the Jew in the street’. He makes a compelling argument, based on analyses of behavior in the wake of the Second Temple’s destruction, that the definitive defeat after 135 could have “precipitate[d] renewed dedication to rituals that provide[d] a sense of social order and spiritual equilibrium.”<sup>53</sup> He points to citations by the rabbis of communal customs and posits that the material finds at Sepphoris paint a picture of people engaged in home purity practices.<sup>54</sup> Thus, while Adler cautions against interpreting the presence of stepped pools as evidence that purity continued to be practiced at the pre-135 levels, Miller’s inclusion of the ritual into a complex society provides a setting where the rabbis could consider its meaning.

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<sup>50</sup> Adler and Amit reject the claim, made by some, that the installations at Sepphoris were baths, not mikvaot. Yonatan Adler and David Amit, “The Observance of Ritual Purity after 70 CE: A Reevaluation of the Evidence in Light of Recent Archaeological Discoveries,” in *Follow the Wise: Studies in Jewish History and Culture in Honor of Lee I. Levine*, ed. Zeev Weiss et al. (Winona Lake, IN: Eisenbrauns, 2010), 128, 131-2.

<sup>51</sup> Yonatan Adler, “Tosefta Shabbat 1:14 - ‘Come and See the Extent to Which Purity Had Spread’ An Archaeological Perspective on the Historical Background to a Late Tannaitic Passage,” in *Talmuda De-Eretz Israel: Archaeology and the Rabbis in Late Antique Palestine*, ed. Steven Fine and Aaron Koller (Berlin: De Gruyter, 2014), 81, n. 46.

<sup>52</sup> Miller cites S. Klein’s 1924 article “The *Baraita* of the Twenty-Four Priestly Courses” here, but has points of disagreement with Adler’s assessments. Stuart Miller, “New Directions in the Study of Ritual Purity Practices: Implications of the Sepphoris Finds,” in *The Architecture, Stratigraphy, and Artifacts of the Western Summit of Sepphoris*, ed. Eric M. Meyers, Carol L. Meyers, and Benjamin Gordon, vol. 1 (University Park, PA: Eisenbrauns, 2018), 462.

<sup>53</sup> Miller, 463.

<sup>54</sup> Stuart Miller, “Stepped Pools, Stone Vessels, and Other Identity Markers of “Complex Common Judaism,” *Journal for the Study of Judaism* 41 (2010): 216 and 223.

The move to the North covers the decades preceding the redaction of the Mishnah. Yoma is considered a late Tannaitic text, as it utilizes earlier material to fill in and clarify narrative points.<sup>55</sup> The oral traditions that were compiled in Yoma therefore span a period of time when mikvaot were used intensively, even if, by the time of the written compilation, adherence to strict purity had diminished. It is noteworthy, however, that many rabbis located to Sepphoris after 135,<sup>56</sup> and this is the city where twenty-two mikvaot have been uncovered.<sup>57</sup>

The rabbis who wrote Mishnah Yoma portrayed the High Priest undertaking a number of purifications. In ALD, it could be posited that the writer added hand and foot washing to solve a textual ambiguity. In Yoma, however, the narrator does more than add hand and foot washing; he multiplies these washings exponentially. He would seem to be bringing into a priestly account his community's frequent immersion practices. If this fact lies behind his writing in so much bathing, what he has effectively done is insert a practice for ritual purity into an account of the cleansing of moral impurity.<sup>58</sup> Although it was necessary to be ritually pure to enter the sanctum, the mishnah goes beyond preparatory rites to incorporating washing to actions within the sacred sphere. This stands apart from other tractates of the Mishnah, where Vered Noan observes that the rabbis restricted "Pentateuchal definitions of purity and impurity to the sacred sphere" while expanding practical purity laws into the profane.<sup>59</sup> Instead, Yoma would seem to bring the everyday into the profane.

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<sup>55</sup> See, for instance, Mali and Glasner's findings that the tannaim cited sayings in m. Tamid. Hillel Mali, "ממקדש" (doctor's dissertation, Bar Ilan University, 2018), 143; Yishai Glasner, "לשימושה של משנת יומא במשניות תמיד," *Netuim* 19 (2014): 91–106.

<sup>56</sup> Stuart Miller, *Studies in the History and Traditions of Sepphoris* (Leiden: Brill, 1984), 4.

<sup>57</sup> Miller's most recent assessment dates the pools from the first century CE to use, possibly, after the earthquake in 363 CE. Stuart Miller, *At the Intersection of Texts and Material Finds: Stepped Pools, Stone Vessels, and Ritual Purity Among the Jews of Roman Galilee* (Gottingen: Vandenhoeck and Ruprecht, 2019), 184–6.

<sup>58</sup> For references to ritual impurity, see footnote 3 in this chapter, and discussions of ritual and moral impurity in chapter one.

<sup>59</sup> Noam, "The Dual Strategy," 492.

An examination of the charts at the beginning of the chapter allows us to see how the rabbis reworked the biblical texts. First, the day depicted in Yoma includes the *עולת תמיד* prescribed in Num 28: 3-8. While this is missing in the Lev 16 account, it can be assumed to be part of the sacrificial sequence on Yom Kippur during the Second Temple. Lev 16: 3 states Aaron and his household's animal offerings, but the bathing in verse 4 could be considered equivalent to the m. Yoma's 3.6 immersion, after the daily burnt offering. What is unique to Yoma is that before the *עולת תמיד*, the text has the High Priest immerse five times to the biblical once, and wash the hands and feet ten times. Lev 16 does not include hand washing at all, but just as this stricture may have been an ambiguity to clear up for the ALD author, so too, the Mishnaic tradition may have solved the ambiguity by adding it in. That it has included, not one iteration, but ten, infers something about its authors' beliefs about purity.

The next set of washings occurs, as mentioned, around the Torah reading. The reading occurs after the Azazel goat is sent to the wilderness: in Leviticus, after the goat is released, at line 24, the Priest bathes. Therefore, one set of ablutions in Yoma matches the Leviticus account at this juncture. Yoma relates that the Torah reading could happen in either linen or gold garments. There seems to be an extra washing of the hands and feet "if" he reads in linen garments, but there is no indication that the linen garments, soiled with the sacrificial activities, are changed at this point for fresh. In Leviticus, after the *עולה*, there is no prescribed washing. Next, the *הטאת* fat is burned. Yoma, however, has the High Priest wash after the *עולה* before dressing in linen: the sequence requires two sets of hand and feet washings. The Mishnah then has the Priest return and remove the shovel from the Holy of Holies before washing the hands and feet, immersing again, and changing into golden garments. After lighting the incense and lamps in the Holy, Yoma—in concert with Leviticus—requires one more ablution before leaving

the Sanctuary area. The activities of retrieving the shovel and lighting the lights are tannaitic additions.

What can we make of this? Overall, Yoma adds quite a bit of material not found in Leviticus, including personal touches such as crowding the ramps of the Temple in order to be first, information on who gave the bigger donations, etc. Stripped of extra-ritual detail, however, the narrative can be read as rule-based: it broadly follows the prescriptions of divine reported speech. Rules, as defined in philosophy, are either necessary or contingent. “Necessary” can best be described as a syllogism, while “contingent” refers to contextual constraints. Many times, these types intertwine. A syllogism that states that “John is unmarried, all unmarried men are bachelors, therefore John is a bachelor” does not help identify the specific circumstances of any one particular “John.” We’ve already seen that the necessary commands relayed to Moses differ, or reveal gaps. Kant points to another problem, that representation, while under a general rule, is still steps away from the original. Thus, there was the “operating real Tent of Meeting” represented in the biblical texts, which seems to metaphorically stand in for “the operating real First Temple,” which is represented again in a text like the Aramaic Levi Document or Mishnah Yoma. That, of course, skips over complicating issues such as if the Second Temple operated differently than the First, contending forces such as Aaronides and Levites, and when the accounts were written and redacted. These issues lead to the problems noted above, where Num 29 subsumed the חטאת within the עולה or when R. Akiva’s tradition reconfigured the ritual order. Philosophically, the series of representations might be termed “regresses” which end, in the context of this body of texts, with the words “and God said to Moses.”

Biblical rules are articulated in semantic concepts appropriate for the language, but in order to understand “make a laver of copper” (Ex 30: 17), for instance, there is a process of inference

that parallels the linguistic, which is based in the knowledge of what a laver is and how to make it out of copper. This real-world knowledge lies behind both the directive and its comprehension, and for the recipient, it involves two kinds of knowledge. A step by step knowledge, what the philosopher Wilfrid Sellars calls “tied behavior” differs from one in which the steps can be justified through a knowledge of the substance, in this case, copper. Sellars calls this “rule-regulated symbol activity” because it links habits of response (e.g. directions) with rules (e.g. physical properties).<sup>60</sup>

Sellars take this bifurcation into a theory of how rules “hook up” with the world. An “organic event plays two roles: 1. a role in the rule-governed linguistic system, and 2. A role in the structure of tied sign responses to environmental stimuli.”<sup>61</sup> If we were to understand rituals as a “linguistic system,” as has been previously discussed in this dissertation, then we can formally state that the event of immersion plays two roles: 1. a role in the ritual system to counter impurity; and 2. a role where the tied sign is the everyday experience of using the mikveh to purify vessels or bodies. Without a Temple, ritual immersion had shifted to the secular sphere, excluding purity practices involving giving offerings to the priests.

Robert Brandom expands Sellars’ claim that “a rule isn’t a rule unless it lives in behavior”<sup>62</sup> by examining how social practices qualify as linguistic practices—ones that impart a semantic content on “states, performances, and expressions caught up in them in suitable ways.”<sup>63</sup> In the case of Yoma, it is possible to ask whether the cultural use of mikvaot is brought to bear on the representation of a functioning Temple, but even more, what that reification of the secular meant to a community without the actual Temple. Brandom proposes identifying a normative

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<sup>60</sup> Sellars, “Language, Rules, and Behavior,” 297-8.

<sup>61</sup> Sellars, 310.

<sup>62</sup> Sellars, 315.

<sup>63</sup> Brandom, *Making It Explicit*, xiii.

vocabulary, but also looks to confirm that these norms have achieved a social status. A common example of how a community sets a rule can be seen in the idea that immersion could be interpreted to be sufficient to return a person to purity in the Pharisaic-Rabbinic interpretation while Sadducean and Qumranic sources required immersion and the passage of time until sunset before they could participate in activities such as the eating of pure food.<sup>64</sup> Brandom notes that a community plays a role in how individuals behave. In the case of whether purity is achieved with only immersion, and no time consideration, community interpretation supersedes the biblical text.

When the rabbis create a narrative of the Temple on Yom Kippur, they re-present it, forming it as a concept through a process of repeating traditions and positing what ought to be done by the ritual participants. Brandom follows Hegel in saying that the judgments and development of the concept are inferential activities.<sup>65</sup> As we saw in the last chapter with Rabbis Akiva and Eliezer, but which also occurs throughout the Mishnah and Tosefta, individuals are reported to assess each other's telling. The redactor of these traditions, of course, confers normativity, especially in the choice of what is included in the report. These events are exercises in justification, establishing a rule-governed linguistic system.

The propositions that result from such a system need to be placed within the overall context in which they are stated. Brandom compares formal semantics with philosophical semantics by describing the former as concerned with syntactic structure modeling, but lacking the apparatus

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<sup>64</sup> See, for instance, Schiffman and Werman, who each have a different approach to the analysis of the effects of immersion, depending on the activity a person wished to engage in, and their community. Lawrence H Schiffman, "Pharisaic and Sadducean Halakhah in Light of the Dead Sea Scrolls: The Case of Tevul Yom," *Dead Sea Discoveries* 1, no. 3 (1994): 285–99; Werman, "The Price of Mediation: The Role of Priests in the Priestly Halakhah."

<sup>65</sup> Brandom notes that Hegel rejects representationalism in his development of inferential notions. Representation, at least in the form I am using to describe the activity of rabbinic narration, is consonant with antique and late antique understandings of how thinking happens. Brandom, *Making It Explicit*, 92.

to provide the semantic interpretation of the latter. Philosophical semantics, he claims, looks at relationship between semantic concepts and the “pragmatic accounts of the proprieties of practice governing the employment of what those concepts apply to.”<sup>66</sup>

As has been said several times in this dissertation, the rabbis’ narrative is a narrative of ritual. It utilizes previous discourse of ritual acts and this chapter is proposing that it incorporates contemporary ritual acts. The insertion of ritual elements—ritemes—into the base narrative carries explanatory power. An act of purification is inserted again and again in a ritual that is explained in Lev 16: 30 as one that will כפר the community when blood is applied to the altars. Although Brandom does not speak of rituals *per se*, he remarks that a pragmatic account is a deliberate instrumental account that secures “antecedently envisageable goals.”<sup>67</sup> The juxtaposition of washing rituals that were being performed with purificatory blood rituals that could no longer be performed enabled the community to apprehend their purity practices within a context of כפר/atonement.

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<sup>66</sup> Brandom, 145.

<sup>67</sup> Brandom, 149.

## B. Prayer and Liturgy

The second rite found in Yoma that will be studied in this chapter self-identifies as an act of confessing/התודה. It meets the formal characteristics of the genre of petitionary prayers, but the central element of confession also emerges as a component of rabbinic blessings said to avoid sancta trespass. It accompanies the praxe of hand-leaning, interpreted by Milgrom to transfer sin to the animal.<sup>68</sup>

The confession is positioned in the sections that m. Yoma 8 identifies as concerning transgressions between humans and God. The terms for sin which the prayer repeatedly list, עון, פשע, stand for deliberate and inadvertent offenses. It is the degree of intent, the deliberateness of their execution, as well as the unrepentant attitude of the transgressor, that pushes these deeds into the realm of sancta trespass. There are two explicit biblical statements of sancta trespass, in Lev 17:11 and Ps 24:1. As noted in the previous chapter, Lev 17:11, building on Gen 9:4, declares that blood is the life force, implicitly God's. Psalm 24 explicitly states that all of the earth belongs to God. The praxematic of applying blood to the altars of the Temple complex cleanses because it replaces sin (death) with life. But we also see, in the development of blessings in rabbinic times, that the verbalization of one's guilt "carries" past offences, enabling one to partake in God's world.

The following will first review the terms for sin in the Mishnaic literature, before comparing how Yoma treats the blood, in contrast to Lev 16. The second section will examine other voices from the tannaitic discourse layer, found in the Tosefta, to posit a cultural setting for blessings that include penitence. As a refresher, the chart below duplicates the one found at the beginning of this chapter, highlighting the three penitential prayers.

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<sup>68</sup> Milgrom reviews four interpretations for this praxe. Transference of sin requires two hands, which our mishnah stipulates. Milgrom, *Leviticus 1-16*, 151.

Yoma	Immerse (טביל) 5x
3.3	Sanctifies (קידש) hands & feet 10x
3.4	Immerses, dresses, washes hands & feet
3.4	עולת תמיד
3.5	Incense offered betw blood and limb offering
3.6	Sanctifies hands & feet. Undresses. Immerses. Dresses. Washes hands & feet.
3.8	Confession on ox (1 <sup>st</sup> time)
4.1	Draws lots for goats
4.2	Confession on ox (2 <sup>nd</sup> time)
4.3	Ox slaughtered in courtyard <ul style="list-style-type: none"> <li>• Blood collected in basin, stirred</li> <li>• Coal and incense from courtyard altar brought behind curtain of Holy of Holies</li> </ul>
5.1	
5.3	<ul style="list-style-type: none"> <li>• Filled chamber with smoke</li> <li>• Short prayer in outer chamber</li> <li>• Collects bowl of blood &amp; brings to Holy of Holies</li> <li>• Blood sprinkled on altar</li> </ul>
5.4	Goat slaughtered <ul style="list-style-type: none"> <li>• Blood collected</li> <li>• Blood sprinkled on H of H altar*</li> </ul>
5.5	Combined ox & goat blood applied to the Altar Before the Lord <ul style="list-style-type: none"> <li>• Leftover blood poured on the western base of outer altar</li> <li>• Leftover blood from outer altar poured onter souther base</li> <li>• Leftover blood mix and drain into the Kidron Valley</li> </ul>
6.2	Confession on Azazel goat <ul style="list-style-type: none"> <li>• Priests and people kneel and prostrate</li> </ul>
6.7	Ox & Goat burned on outer altar
7.3	If he reads from the Torah in linen garments, he sanctifies hands & feet, undresses, immerses. Dresses in gold garments, sanctifies hands & feet.
7.3	עולה

7.3	Sanctifies hands & feet. Undresses. Immerses,. Dresses in linen, sanctifies hands & feet.
7.4	Removes shovel from Holy of Holies.
7.4	Sanctifies hands & feet. Undresses. Immerses. Dresses in gold.
7.4	Lights incense & lamps in Holy.
7.4	Sanctifies hands & feet. Undresses. Immerses. Dresses in personal clothing.
7.4	Goes home for feast.

The three confessions differ in person: the first two are in the first person, while the third, over the Azazel goat, speaks for the nation. While the second adds a few words, the three retain a base in Lev 16: 21. The translation that I give for Lev 16: 21 follows Baruch Schwartz, as discussed in Chapter One.

וסמך אהרון את שתי ידיו על ראש השעיר החי והתודה עליו את כל עונת בני ישראל ואת כל פשעיהם לכל חטאתם ונתן אותם על ראש השעיר ושלה ביד איש עתי המדברה

Aharon placed his two hands on the head of the living goat and confessed on it all of the wanton sins of the Israelites and only the deliberate offenses among all their sins, and he put them on the head of the goat and sent [it] to the wilderness by the man [who stands] ready.<sup>69</sup>

The Mishnah's use of the Levitical confession on the goat for the ox is significant. In Leviticus, the Azazel goat is receiving the sins that the High Priest has carried out from his cleansing of the Holy of Holies. The animals whose blood is used to purify the altars are sacrificed without a hand-laying or confession, instead, they represent their owners—the priest and his house, and the Israelites. Their life-force is meant to counter sin, and the sin is already in the sanctuary. At verse 4, the ox is described as a חטאת and at verse 5, the goats are described as such as well.

If, reading with Lev 16:21, hand-laying plus confession indicates a transference of sins, then the Mishnah at 3.8 and 4.2 indicates the bringing in of the confessed sins of the High Priest,

<sup>69</sup> Schwartz, "The Bearing of Sin in the Priestly Literature."

his household, and the sons of Aaron—to be purified at the altars. Curiously, while there are elaborate descriptions of manipulated blood, the animals are not described as חטאת offerings, only as property. The Mishnah uses the imperative (צווי) voice to ask haShem to atone (כפר נא), but does not indicate that the blood כפר, as does Lev 16: 16, 18, 20.

The first confession, at Mishnah Yoma 3.8, is for the ox, whose blood is destined for the Temple altars. We see a repetition of the three categories of sins from Leviticus, now stated as a list, and repeated four times:

<p>And thus he would say “Oh I pray<sup>70</sup> haShem<sup>71</sup> I did wrong, I deliberately transgressed, I failed, I and my house. Oh I pray haShem please atone on wrongs, transgressions, and on sins that I committed , transgressed, and sinned before you, I and my house. Oh I pray haShem please atone on the wrongs, transgressions, and sins that I committed, transgressed and sinned before you, I and my house. As it is written in the Torah of Moses your servant “because on this day, etc.”<sup>72</sup> And they<sup>73</sup> answered after him “blessed is [the] name of glory, our king, forever.”</p>	<p>וכך היה א' אנה השם עויתי פשעתי חטאתי אני וביתי אנה השם כפר נא לעוונות לפשעים ולחטאים שעויתי שפשעתי ושחטאתי לפניך אני וביתי אנה השם כפר נא לעוונות לפשעים ולחטאים שעויתי שפשעתי ושחטאתי לפניך אני וביתי ככ בתור משה עבדך לאמר כי ביום הזה וגו והן עונים אחריו ברוך שם כבוד מלכתנו לעולם ועד</p>
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The three words semantically equivalent to the English “sin” receive variant translations in Jastrow’s *Dictionary* than their biblical predecessors. עון is commonly translated by biblical scholars as “iniquity,” a word that can be defined as “gross immorality.” Schwartz translates it as “wanton,” which, defined as “a reckless disregard of consequences,” immediately conveys that this stands for deliberate offences. Jastrow gives instances where the verb conveys

<sup>70</sup> Jastrow, *Dictionary of the Targumim*, 80.

<sup>71</sup> “HaShem” translates as “the Name,” which commonly denotes the deity.

<sup>72</sup> Presuming this references Lev 16: 30, “for on this day atonement shall be made for you to cleanse you of all your sins, you shall be clean before YHWH.”

<sup>73</sup> The assembly of priests

“subvert,” “wrong,” or “lay waste” while the noun means “wrong-doings.”<sup>74</sup> פשע in biblical Hebrew denotes a deliberate sin, and Jastrow describes this as a “willful” or “rebellious” transgression.<sup>75</sup> חטא in biblical Hebrew indicates both deliberate and inadvertent sins. “Miss the mark” is more accurate than the theologically laden “sin.” Jastrow provides “fail,” “err,” and “sin” as translations. He notes that חטאת, coming from biblical Hebrew, is a “mistake” or “inadvertent sin.”<sup>76</sup>

The second confession, at m. Yoma 4.2 is the same, except for the inclusion of the sons of Aaron. The Kaufman manuscript uses the Hebrew equivalent of “etcetera” after the כפר נא.

Oh, I pray haShem, I did wrong, I deliberately transgressed, I failed before you, I and my house and the sons of Aaron, your holy people. Oh I pray haShem, please atone...	אנא השם עניתי פשעתי חטאתי לפניך אני וביתי ובני אהרן עם קדושיך אנא השם כפר נא
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The confession on the Azazel goat, at 6.2, follows the same pattern, only it is in the third person plural. Since this, according to Lev 16, is the sending of the sins of the nation carried from the Sanctuary, the pronominal choice is in accord with the biblical text. The Kaufman manuscript again abbreviates the second two depictions, only presenting the confession up to the second “please haShem”:

Oh I pray, haShem, they did wrong, they deliberately transgressed, they sinned before you, your people, the house of Israel. Oh I pray, haShem...	אנא השם עו פשעו חטאו לפניך עמך בית ישראל אנא השם כפר נא לעוונות לפשעים ולחטאים שעו שפשעו ושחטו לפניך עמך בית ישראל אנא השם
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Rodney Werline has outlined four criteria for the genre penitential prayer:

1. An individual or representative of a group addresses God directly. This type of prayer is not part of a broader human-divine conversation, such as in (Ex 32-4).
  - a. It addresses God via the second person.

<sup>74</sup> Jastrow, *Dictionary of the Targumim*, 1049.

<sup>75</sup> Jastrow, 1247.

<sup>76</sup> Jastrow, 447.

2. It uses the *hitpael* form of the verb יָדָה.
3. The speaker acknowledges their own sins or the sins of the people.
4. There is a “petitionary” section which requests forgiveness, along with the removal of present problems of potential punishments to be withdrawn.<sup>77</sup>

It can be readily seen that the three prayers fulfill these criteria. The word for confession, סוּמַךְ שְׁתִּי, precedes the prayer. The text describes the High Priest’s actions by saying that: יָדָיו וּמִתּוֹדָה/he places his two hands on it [the animal] and confesses.

The first prayer—and implied in the second and third prayers—contains a three-fold formula: I did עָוֹן, חָטָא, פָּשַׁע; please atone for עָוֹן, חָטָא, פָּשַׁע; I did עָוֹן, חָטָא, פָּשַׁע before you. The repetition of these three terms for sin creates a poetic rhythm, but also allows the hearer to easily differentiate the three separate purposes for the recitation: the personal prayer of the High Priest and his household, the prayer of the priests, and the prayer of the nation. Interestingly, although the prayer itself is based on Lev 16: 21, it explicitly reminds God of God’s words by citing the promise made in Lev 16: 30.

### 1. Praxematics: The Return of the Life Force

Although the form of these prayers strongly resembles Leviticus, the three terms of the prayer עָוֹן, חָטָא, פָּשַׁע, are placed in a context that reveals a development in the meaning of “sin.” Chapter One detailed a conception of sin in the Priestly literature and how aspects of that cosmology both underlie and shift in the final chapter of Mishnah Yoma. As Jacob Milgrom has read the biblical verses, the inadvertent transgression of an individual pollutes the courtyard, and is purged with the חָטָא blood (Lev 4:25, 30; 9:9).<sup>78</sup> The inadvertent transgression (חָטָא) of the High Priest or by the entire community pollutes the inner altar of the Sanctuary (Lev 4:6), while

<sup>77</sup> Rodney A. Werline, “Reflections on Penitential Prayer: Definition and Form,” in *Seeking the Favor of God*, ed. Mark Boda, Daniel K. Falk, and Rodney A. Werline, vol. 2, 3 vols. (Atlanta: Society of Biblical Literature, 2007), 212.

<sup>78</sup> Milgrom, *Leviticus 1-16*, 257.

the force of deliberate, rebellious acts (פשעים and חטאות) pollutes the outer altar and travels all the way to the Ark of the Covenant in the Holy of Holies (Lev 16:16).<sup>79</sup>

The narrative in Yoma follows the Levitical application of blood, without indicating a function. The blood from the ox—who received the confession at 3.8 for the High Priest and his house’s transgressions and at 4.2 for the him, his household’s and the collective sons of Aaron—is applied to the inner altar of the Sanctuary by the same method in both texts, by way of sprinkling it seven times.<sup>80</sup> The Israelite’s goat is then slaughtered and its blood also applied to the inner altar. The Mishnah does not repeat Lev 16: 10, which explains that the Azazel goat כפר, nor the information in verse 22, that it “carries” the sins that the High Priest transfers upon it. Instead, during the Azazel goat’s journey into the wilderness, m. Yoma 7:1 describes a synagogue (בית כנסת) scene in which Lev 16 and 23: 26-32 are read, along with eight blessings. Just as כפר is separated from the blood manipulations into a prayer, so the actions of the Azazel goat are separated by a parallel depiction of readings and blessings.

While the designated animals (ox and goats) and the designated groups of people (High Priest and his household, sons of Aaron, community of Israel) are roughly congruent in the two texts, the division of transgressions is less clear. As we have seen, the force of transgressive deeds, in biblical ideologies, threatens the covenantal relationship. It could be said that such deeds negate life and that the offering of life, the blood of beings, is a force that overpowers this negation. The Mishnah’s narration of blood application is, in speech act terms, a fallacy, in that the cleansing blood is now fictive, and cannot be applied. This could go some ways to

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<sup>79</sup> Schwartz makes the claim that the vav included in the word וּפְשָׁעֵיהֶם is a conjunctive, “indicating clearly that a *double* purgation is described: one that removes *both* impurities *and* sins” [italics his]. Milgrom; Baruch Schwartz, “The Bearing of Sin,” 6-7.

<sup>80</sup> The biblical account requires that the curtain (פרכת) be daubed, whereas the mishnah details an elaborate serpentine journey through the curtains, before daubing the altar. Also, the Mishnah describes the sprinkling process in greater detail.

explaining why, where Leviticus tells us that the High Priest said something, Yoma tells us what he said, amplifying the issues raised in the base account in Leviticus.

## 2. Mishnah Yoma's Setting within Tannaitic Discourse

Lev 5: 21 uses the term מעל, which as Milgrom has shown, is a sancta trespass. As he interprets the literature, the sanctum trespassed “is none other than the Deity.”<sup>81</sup> From the false oath of the Priestly literature, however, the tannaim shape a meaning of misappropriation of items dedicated to haShem. Like Yoma, these texts are couched in Temple imagery of dedicated produce, but the blessing and confessional language that releases the items for human use is ostensive: all the earth is the LORD's and its use must be regarded as a gift.

Psalm 24:1 declares that “the earth is the LORD's,” and is used by t. Ber 4:1 to explain that: “the person who benefits from the world without saying a blessing, commits a sancta trespass, מעל, until [performing] all of the commandments permits him [to benefit]”:<sup>82</sup>

לא יטעום אדם כלום עד שיברך שנ' לה' הארץ ומלואה. הנהנה מן העולם הזה בלא ברכה המעל עד שיתירו לו כל המצות.

As Baruch Bokser points out, by reciting the blessing, one gains permission to benefit from what is actually not a human prerogative. Further, the blessing acts to fulfill “all the commandments,” in a sweeping phrase that would seem to point towards Temple sacrifices.<sup>83</sup>

Tosefta Kippurim 4:14 links confession to eating and drinking, and the Day of Atonement:<sup>84</sup>

מצות וידוי ערב יום הכפורים עם חשיכה. אבל אמרו חכמים מתודה אדם קודם שיאכל וישתה צריך שיתודה לאחר אכילה ושתייה שמא תטרף דעתו בתוך אכיל' ושתייה ואע"פ שמתודה קודם שיאכל וישתה צריך שיתודה לאחר אכילה ושתייה שמא אירע דבר קלקלה בסעודה ואע"פ שהתודה לאחר אכילה ושתייה צריך שיתודה ערבית...

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<sup>81</sup> Jacob Milgrom, *Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* (Leiden: Brill, 1976), 19.

<sup>82</sup> Bokser draws attention to this passage. Saul Lieberman, ed., *The Tosefta*, vol. Zera'im (New York: The Jewish Theological Seminary of America, 1962), 18; Baruch Bokser, “Ma'al and the Blessings Over Food: Rabbinic Transformation of Cultic Terminology and Alternative Modes of Piety,” *Journal of Biblical Literature* 100, no. 4 (1981): 558.

<sup>83</sup> Bokser, “Ma'al and the Blessings.” 559.

<sup>84</sup> Lieberman, *The Tosefta*, vol. Moed, 254.

“Command of confession [begins] at dark on the evening of Yom Kippur. But the Sages said that a person confesses before he eats and drinks. He needs to confess after he eats and drinks lest he was distracted while he ate and drank. Although he confessed before he ate and drank, he needs to confess after he ate and drank lest something befell to disturb his meal. And although he confessed after eating and drinking he needs to confess during the evening prayer...[morning prayer...additional prayer...afternoon prayer...closing prayer].”

The multiple commands to confess are linked to distraction, which, if read with the Tosefta Berakhot, is a distraction from the realization that one is partaking in the LORD’s gifts. The awareness of being on holy ground, so to speak, elicits blessings and confessions. These statements have a powerful resonance with the passage in Jubilees 6: 1-22 examined in Chapter Two.

It will be recalled that Jubilees describes the sacrifices Noah makes, and the divine promises he receives in return. In that account, Gen 9: 4 is invoked (do not eat the blood), but also, Lev 17:11, “the life of the flesh is in the blood...the blood expiates by means of life.” The problem is that Jub 7:14 describes what VanderKam interprets as “supplication” and Werman as “accepting,” blood for wrong-doing—implying that blood was eaten. Jubilees thus sets up a scenario where oaths are made, broken, and renewed. The idea that humans are bestowed gifts with limits, but often appropriate for themselves beyond the limits, and thus need to offer compensation is the theme of Jubilees 6, but also underlies these Tosefta passages. Jubilees, written when the Temple apparatus was in place, requires compensatory sacrifices. Interestingly, they were accompanied by oaths, or a renewed commitment to keep the covenant. In the Tosefta, without a Temple, blessings become the compensatory gift, with an intense verbal focus on the initial gift of being on God’s earth.

Gift exchange provides us with a way to interpret the petitionary prayers in Mishnah Yoma. The Mishnah’s confession, amplifies the biblical passage, yet positions its petitions at the same point where the biblical text states that the High Priest slaughters the animals for their atoning

blood. Moreover, the biblical text implies the types of sins by way of the altars where the blood is applied, but the Mishnaic text repeatedly couples the three categories of sin — חטא, פשע, עון — with the confessions. This pair of sin and confession with the animal expands כפר to a verbal practice. The confession is a form of compensation—acknowledgement of transgression in exchange for expiation.

Joshua Levinson, cited in the Introduction, calls attention to intentionality in rabbinic literature. In *tos. Kip 4:14*, the concern that a practitioner’s awareness would slip is particularly strong, and commands confession as the counter-force to this possibility. The passage is couched in second-order legal discourse, which meets Levinson’s criteria of a dialogic self “who” is focused on how one does something—in this case, eating.<sup>85</sup> Mishnah Yoma’s prayers, presented as first-person speech, are reflections on the actions of self, family, and nation. Levinson, following Christopher Gill, notes that this type of consideration participates in a “consensual community of values...and is not the modern selfhood of a unique individuality.”<sup>86</sup> The act of reciting blessings, in Levinson reading, constructs a reflexive self: a person keenly aware of their offenses against the law, but also, through their confession, able to atone.<sup>87</sup> The development of blessings extends the realm of holiness from the Temple to the community. If the ancient cosmology understood a miasmic force emanating from transgressive deeds entering into the abode of the deity, the rabbinic cosmology understands that abode as the earth’s, with the responsibility of the community to recite blessings and maintain purity.

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<sup>85</sup> Joshua Levinson, “Post-Classical Narratology and the Rabbinic Subject,” in *Narratology, Hermeneutics, and Midrash: Jewish, Christian, and Muslim Narratives from the Late Antiquity through to Modern Times*, ed. Constanza Cordoni and Gerhard Langer (Vienna: Vienna University Press, 2014), 89.

<sup>86</sup> Gill, as previously noted, distinguishes between objective and subjective characteristics in thought. Levinson positions the rabbis in the milieu of the Stoics, whose texts Gill analyzes and concludes are “objective-participant” in their reference to communal values. Levinson, 86; Christopher Gill, *The Structured Self in Hellenistic and Roman Thought* (Oxford: Oxford University Press, 2006), 343; 359-370.

<sup>87</sup> Levinson, “Post-Classical Narratology,” 81.

### 3. Penitential Prayer Precedents

Rodney Werline states that the penitential prayer's use of the verb confess, התודה, can be found in "priestly circles," citing Lev 5:5, 16:21; 26:40; Num 5:7.<sup>88</sup> Lev 16:21, of course, was just examined above, while it will be recalled that Milgrom linked Num 5:7 to Lev 5: 20-26. Lev 5:5 concerns an inadvertent transgression. Lev 26: 39-40 speaks of the wanton עון as a מעל, or sancta trespass. These instances, Werline suggests, are the basis for the verb's use in the prayers found in Dan 9:4, 20; Ezra 10:1; Neh 1:6; 9:2; and 9:3. However, the history of the Levites, as traced so far, suggests that the presentation of confession passages in Mishnah Yoma can probably attributed to Levites within Second Temple priestly circles.

Interestingly, Neh 9: 4-5 individually names Levites as the singers of the blessing, and the parallel prayer in Dan 9 contains many Deuteronomistic phrases.<sup>89</sup> Werline uses the example of the confessional prayer in 1 Kgs 8 to point to the characteristic of the genre of acknowledging one's own, or the people's sins: as noted in Chapter Two, this prayer is a product of the Deuteronomistic school.

While the passages from Leviticus and Numbers are P source material, it would seem that individuals who traced their traditions from E and Levite circles developed prayers throughout the Yehud and Hellenistic periods. Neh 1: 6b-8 resonates with the prayers in m. Yoma:

אנכי מתפלל לפניך היום ולילה על בני ישראל עבדיך ומתודה על חטאות בני ישראל אשר חטאנו לך ואני ובית אבי חטאנו 7 חבל חבלנו לך ולא שמרנו את המצוות ואת החוקים ואת משפטים אשר צוית את משה עבדך

I pray to you today, day and night, for the children of Israel, your servants, and confess the sins of the children of Israel that we sinned against you, and I and my father's house, we sinned. 7 We acted corruptly against you, and we did not keep the commands and laws and judgments that you commanded [to] Moses your servant.

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<sup>88</sup> Werline, "Reflections on Penitential Prayer," 212.

<sup>89</sup> John J. Collins, Frank Moore Cross, and Adela Yarbro Collins, *Daniel: A Commentary on the Book of Daniel* (Minneapolis: Fortress Press, 1993), 22.

When we place this prayer beside the Temple Scroll, which has Deuteronomistic, and therefore Levite traditions, a pattern of engagement with anti-establishment priestly voices emerges. Through generations, these voices position themselves as interpreters who expand holiness outside of the Temple (or mishkan's) sphere. The fact that the confessions move the act of כפר to the area in front of the Temple is in line with this trend, and, without the Temple's operation, confession effectively turns the now infelicitous act into one that is felicitous.

#### **4. Confession as Speech Act**

The High Priest's statement has two parts: a request and an extended locution statement. The request atone/כפר, tempered by please/נא, is followed by the confession, a locutionary statement that has an illocutionary force.

The imperative form is considered an implicit performative because it employs linguistic mood. While this verb is in the Hebrew צווי, used to articulate imperatives, God is not being commanded but implored. According to Stephen Levinson, this falls into a class of implicit performative, where the utterance performs an entreaty.<sup>90</sup>

According to John Searle's theory of indirect speech acts, a felicitous request must meet four conditions: "H is able to perform A; S wants H to do A; S predicates a future act A of H; and [the request] counts as an attempt by S to get H to do A."<sup>91</sup> These criteria are met in the High Priest's "atone, please." Since the addressee is supernatural, it is harder to confidently state that "S" meets Searle's commissive criteria. Certainly, it is understood that S is able to perform A, and that H wants S to perform A. Sincerity of S can be assumed within the tradition: S intends to do A. The commissive propositional content, that "S predicates a future act A of S," is less

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<sup>90</sup> Stephen Levinson, *Pragmatics* (Cambridge: Cambridge University Press, 1983), 234.

<sup>91</sup> John Searle, *Expression and Meaning: Studies in the Theory of Speech Acts* (Cambridge: Cambridge University Press, 1979), 44.

certain, yet it would seem that the belief of the High Priest in making the statement carries the essential commissive condition that the statement “counts as an undertaking by S of an obligation to do A.” The criteria for the speech act could be positively affirmed if applied to the physical acts of daubing blood, according to the witnesses of biblical texts which report directives from the deity to do perform these acts. Although that direction is missing in the prayer, the prayer is linked to the now infelicitous narrative of blood application.

The problem with the statement of confession is that it is just that, a statement. It seems to not make a promise of change. In Searle’s 1969 work, he works from a theory of promises to one that extends to hypothetical promises. More formally, he states this as “a certain illocutionary act, which do[es] not [it]self mention the performance of any illocutionary act.”<sup>92</sup>

Promises can be summarized as:

“[if] speaker S utters a sentence T in the presence of a hearer H, then, in the literal utterance of T, S sincerely and non-defectively promises that p to H if and only if the following conditions 1-9 obtain:

1. Normal input and output conditions obtain.
2. S expresses the proposition that p in the utterance of T.
3. In expressing that p, S predicates a future act A of S.
4. H would prefer S’s doing A to his not doing A, and S believes H would prefer his doing A to his not doing A.
5. It is not obvious to both S and H that S will do A in the normal course of events.
6. S intends to do A.
7. S intends that the utterance of T will place him under an obligation to do A.
8. S intends (intention #1) to produce in H the knowledge (K) that the utterance of T is to count as placing S under an obligation to do A. S intends to produce K by means of the recognition of intention-1, and he intends intention-1 to be recognized in virtue of (by means of) H’s knowledge of the meaning of T.

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<sup>92</sup> John Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969), 56.

9. The semantic rules of the dialect spoken by S and H are such that T is correct and sincerely uttered if and only if conditions 1 – 8 obtain.”<sup>93</sup>

In less abstract terms, if the confession were instead a promise not to transgress again, we can think of the above as a method to isolate sincerity, the proposition from the statement, and the power of intention, both by the speaker and its recognition by the hearer.

In general, Searle notes that illocutionary acts operate by way of a certain psychological state within the sincerity condition. Thus, the performance of the speech act counts as an expression of the psychological state.<sup>94</sup> The expression of fault, indeed, an intensified expression of fault, performs this act. The proposition—to do better—is missing, however propositional content could be interpreted as illocutionary. It will be recalled from the Introduction that illocutionary force is understood in a question such as “do you know the way to the post office?” When the request for atonement is coupled with the acknowledgment of fault, there is an illocutionary force present that the speaker desires to do better.

Implied in an illocutionary act is the belief that the thing promised is in the interest of the hearer. This returns us to the covenantal relationship, and reported statements of God’s commands. The intention of the hearer is encoded in the covenant. In texts such as Jubilees, there is a recognition that the intention of the speaker does not, in fact, match the promise. Mishnah Yoma’s development of the petition and confession speech aligns with Jubilees. It is innovative in aligning a felicitous speech action with the authoritative acts of purgation.

In m. Yoma 8.9 the situation of an insincere utterance raises the question of the scope of a promise. As presented in Chapter One, a person who says “I will sin and repent,” the words do not accomplish atonement. In fact, relying on the Day to accomplish atonement, which of course

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<sup>93</sup> Searle, 57-61.

<sup>94</sup> Searle, 65.

means the confessions said for the benefit of the community, is a false reliance. The Mishnah instead says that a person must “appease” the person whom she has offended. A promise must be enacted in order to be fulfilled.

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This chapter begins with Boyarin’s theory that a phoneme can be a biblical phrase, used to open the meaning of adjacent material to a new meaning. I have suggested that ritemes, ritual ‘phrases’, can act similarly. The two ritemes that are given prominence in the narrative of the High Priest’s ritual , immersion and confession, are amplifications of communal practice. Placed in a narrative of a ritual that cannot be performed, but carrying the philosophical significance of a rule, these ritemes undergo a textual sanctification, allowing the community to view their own use of them as fulfillment of the divine commands.

## Conclusion

This dissertation poses the question, “why did the rabbis create a narrative of the High Priest’s actions on Yom Kippur after the Temple had been destroyed?” and proposes that they did so as an aid in thinking about the problem of atonement in its absence. A common interpretation of Temple narratives in tannaitic literature has been that the rabbis used these narratives as memory-keepers for the day when a third Temple would be possible to construct. My analysis, however, proposes that Mishnah Yoma uses the Temple narrative to instantiate practices already being used in the community to expand holiness.

We’ve seen that the eighth chapter of Yoma presents a different vision of atonement. At the conclusion of my last chapter, the High Priest’s confession, composed by the rabbis, is overturned by them when they note at mishnah 8.9 that words can be insincere, and prescribe deeds. In fact, the very end of the chapter equates YHWH, hope, and mikveh: the purifying (מטהר) power is the deity, and imbues the ritual practice. It can be argued, therefore, that chapter eight is the ‘solution’ to the demise of the sacrificial system and there is no real need for the preceding seven chapters of narrative. Such an argument of course neglects the recitation of Yoma in the liturgies that developed in subsequent generations—even to the present day, when it forms part of the musaf service. The practices that develop after the destruction still needed the signifying power of the divinely commanded Temple.

I would draw a distinction between an idealized sacrificial system and the Temple as a mode of thought. Mira Balberg, for instance, has proposed that the rabbis use Temple narratives, not as a way to “mummify the memory” but as a way to discursively generate the concept of Jews as a people who sacrifice.<sup>1</sup> She points out that practices such as prayer are not substitutes

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<sup>1</sup> Mira Balberg, *Blood for Thought: The Reinvention of Sacrifice in Early Rabbinic Literature* (Berkeley: University of California Press, 2017), 229.

for sacrifice, but, as Jonathan Klawans also asserts, are supplementary to sacrifice, which retained its place as the primary religious expression.<sup>2</sup> This dissertation weaves a path between solutions that ultimately do not require sacrifice and the importance of sacrifice in rabbinic thought.

The preceding chapters have examined these issues from the perspective of semiotic linguistics. First, inspired by Foucault's theory that discursive strata form objective subjects, the chapters trace how subjects such as the repairing of wrong is considered in biblical and Second Temple literature. Second, writers across the generations think ritually: texts that report ritual steps, by differing from other reported rituals, reveal areas of concern for particular communities. Additions, subtractions, changes in order are meaning points. Third, understanding the normative authority of the bible enables us to view the positioning of newly emphasized ritual components beside standardized versions of the ritual sequence as a strategy to imbue the new as also authoritative.

The following will re-present these three central arguments.

### **A. The Objective-Participant Thinker**

Christopher Gill contrasts modern, post-Kantian thinkers with they type of thinking displayed in texts from the ancient world. Modern ideas of thinking can be characterized as originating in the autonomous thinking subject, whereas the ancients are portrayed as acting on reasons that are derived through engagement with a community.<sup>3</sup> The rabbinic dialogues attested in Mishnah Yoma exemplify this sort of engagement. While earlier texts in the Israelite tradition do not portray characters in this type of dialogue, we do see texts themselves in dialogue with other

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<sup>2</sup> Balberg, 230; Jonathan Klawans, *Purity, Sacrifice, and the Temple* (Oxford: Oxford University Press, 2006), 203-9.

<sup>3</sup> Christopher Gill, *Personality in Greek Epic, Tragedy, and Philosophy: The Self in Dialogue* (Oxford: Clarendon Press, 1995), 11-12.

texts, which, following text-critical methods, can be traced to communities whose ideologies are in debate. While Kant strove to locate what he called an a priori, the place prior to experience where reason determines an object, Foucault defined the history of statements to be a rationality, or a priori. Foucault gives us the concept of the archive. This consists of a *langue* (in Saussurean terms, rules and conventions of a signifying system) of possible sentences and the *corpus* that passively collects the words that are spoken. The archive is the “practice that causes a multiplicity of statements to emerge as so many regular events...it reveals the rules of a practice that enables statements both to survive and to undergo regular modification. It is *the general system of the formation and transformation of statements*” (italics his).<sup>4</sup> The examination of biblical passages and Second Temple literature throughout the dissertation is an attempt to create such an archive.

Foucault’s work to determine a “subject” that is formed through discursive practices across epochs provides us with a method of inquiry behind a number of rabbinic assertions. The Mishnah’s base text, Leviticus 16, in fact represents a conceptualization of miasmic force that other eras more concretely depicted as something that triggers plagues and destruction. Leviticus retains some sense that the force is tangible in its depiction of purgative blood and in its depiction of deliberate sins that are carried out of the Sanctuary and put upon the Azazel goat. Leviticus 5 adds a dimension unconsidered in Numbers 25’s depiction of oath breakers: instead of pre-emptively slaying the offenders, Lev 5 delineates the steps necessary to turn around the false speech. These ideas are developed by the rabbis, who mandate that the victim sets the terms of repair. Discourses around the problems of communal disasters, sacrifices aimed at restoring a

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<sup>4</sup> Foucault, *The Archaeology of Knowledge*, 130.

balance between heaven and earth, and the ongoing problem of individuals who transgress norms, all go towards forming a “subject” of repair. The boundaries, as Foucault would suggest, come out of statements that blood is YHWH’s, and that the force of transgression is met by the force of the deity. But it is also shaped by affirmations to the covenant and acts that deny the covenant, so that a type of repair that emerges in the Mishnah engages the injured party’s input.

Tracing a discourse on the burnt offering, or עולה, two subjects emerge: the disposal of blood and the role of the עולה in the exchange of gifts between YHWH and the community. In the Aramaic Levi Document and in Jubilees, examples of correct and improper dispositions of blood play roles. ALD’s priest washes blood from his clothes after sacrificing, which is in addition to washing his body and hands and feet in two rituals preparatory to the sacrifice. In this text, blood is linked to purity. In Jubilees, the example of correct blood manipulation is linked to receiving God’s promises of well-being and, even after mis-steps, blood renews the covenant. Indeed, the question of the precedence of the role of blood as a purging agent (or return of what is YHWH’s to YHWH) over the role of a whole burnt offering as gift runs through the pre-exilic and Second Temple literature. This thread of discourse emerges in the Mishnah as multiple immersions in the High Priest’s ritual sequence, as well as a dispute between two rabbis over when the עולה should be offered.

The dispute over the עולה is not only a product of an ambiguous textual history. It also represents two different authoritative traditions: one that looks to a Sinaitic legal origin, while the other considers that community practice is the source of normativity. The record of the dispute (as well as several others in Yoma) exemplifies the type of

thinking displayed in other antique and late antique texts. In contrast to both the Aramaic Levi Document and the Temple Scroll, which both claim divine authority, Yoma is dialectical. Rabbis Akiva and Eliezer, in as much as they participate with each other on the scroll of the Mishnah, reason by validating and correcting each other in order to establish a shared communal value—Christopher Gill’s objective-participant.

A further way that the objective view of the text establishes a subject is found in the relationship between the real author, in his contemporary world, and how he considers himself in relation to previous discourse. This process can of course be observed in any reader or hearer of traditions. Texts like Jubilees and the Aramaic Levi Document, where the past is reimagined, provide an anonymous self-reflexivity. Dina Stein raises this issue in her analysis of stories of rabbis who comment on texts by way of midrash.<sup>5</sup> In contrast, Yoma’s rabbis only seek to correct a narrative that has its origins in the collective atmosphere of master-disciple circles. Its awareness of Second Temple traditions, such as those memorialized in Jubilees or the Temple Scroll, suggest a further discursive subject by the very parameters of previous interpretation. The implicit transgression in Jubilees is expressed as vows to do better, whereas Yoma implicitly vows to reform through an extended confession: while remarkable in itself, both texts can be read to substitute blood application with verbal acts. The history of discourse points towards a recognition that the rabbis utilized, consciously or not, historical themes.<sup>6</sup>

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<sup>5</sup> See the Epilogue for a summarized view. Dina Stein, *Textual Mirrors: Reflexivity, Midrash, and the Rabbinic Self* (Philadelphia: University of Pennsylvania Press, 2012).

<sup>6</sup> Foucault, *The Archaeology of Knowledge*, 127.

## **B. Thinking Ritual**

Another way that Mishnah Yoma displays its process of thinking about the problem of atonement without a Temple is the manner in which it presents ritual. Yoma's narrative of the Day of Atonement expresses any number of differences from the biblical texts. The dissertation has isolated the עולה, immersions, and the confession because these elements are windows into preceding discourse strata.

Naphtali Meshel uses linguistic theory to model Israelite sacrifices. Inspired by Chomsky's generative grammar, Meshel identifies necessary rules for offering animals, with their attendant supplements. Members of communities that practiced these rites had an unconscious grasp of the system, much like a native speaker acquires language from hearing it. Ritual theorists have wrestled with Frits Staal's assertion that rituals have no meaning, but the points where texts differ reveals a certain meaning that various groups contest.

The Temple Scroll uses Leviticus and Numbers as sources in its presentation of the Day of Atonement, but names the עולה first, in accordance with Num 29. This placement could mean that the author interpreted the sacrifice as a gift (pleasing aroma), or, as Cana Werman suggests, a sanctification of the altar. In either case, the author clearly takes ritual rites from the corpus and arranges them to form a meaning that suits his purpose.

A different interpretative puzzle was worked out by the author of the Aramaic Levi Document. He includes praxemic information such as the type of permissible woods and inspections of said wood for worms, as well as jugate details. Beyond filling in details, however, he also expands the command to wash, with a washing that is apparently

separate, to wash the hands and feet. This special washing is only found in the Bible at Ex 30: 17-21. There it precedes entering the Tent of Meeting. None of the biblical sources include this step during the actual sacrificial procedure, as ALD does. The ALD uses the word for wash, followed by instructions to put on the priestly garments, so that there is an assumption of a pool. “Sanctification” is the word used to describe the hand and foot cleansing. This word differentiation implies that the author understood a functional difference in the activities. It is interesting that his innovation of a mid-sacrifice hand and foot sanctification comes after a blood purificatory action and before the preparation of the body parts for burning. This rite held significance connected to blood, as he inserts it again after instructing the priest to not let any blood cling to your garment, but before removing any sacrificial flesh.

In Jubilees, the עולה can be understood to be part of a gift exchange between humans and the divine. While the phrase “pleasing aroma” is used adjectively in the Bible, both gift and sanctification emerge in the discourses about the sacrifice. The dispute over its timing in Mishnah Yoma thus has these issues structured within the disputants’ positions. Another ritual element inserted into Yoma is the location of the confession. While Leviticus also has a confession that takes place outside of the Temple, Yoma’s confessions take on the valence of a purification that biblically happened inside the Temple. Not only is this rite privileged through expansion, its implied function, the vow to do better, purifies the High Priest and community in a location where previous strands of biblical tradition asserted human-divine communication takes place. The rabbis thus signal a certain ideology through the positioning of this rite. Their elaborate depiction of the High Priest’s actions within the Temple, with no mention of the

blood purging function, amplifies the confession. It is also noteworthy that the added scene of the rabbis' reading of the Day's *parsha* is narrated to occur at the same time as the Azazel goat is sent into the wilderness. The Leviticus confession is said on the head of the Azazel goat, but while Yoma also has the third confession on the Azazel goat, it narratively positions the High Priest's next acts as preparing the ox and goat for slaughter, before participating in a synagogue service. The burning of the ox and goat is portrayed to be simultaneous with the synagogue service, but is also happening while the Azazel goat walks to the precipice.

The rites of the Temple rituals are expanded and given new significance in Yoma. It will be recalled from the Introduction that Aristotle posited three concepts that make up knowledge: *dunamis*, *energeia*, and *entelecheia*. The last, *entelecheia*, is the full utilization of what has been learned. The rabbis' immersive re-telling of the rituals fully engaged them in the components of the Day. They took paradigmatic elements, developed over centuries of discourse, to shape a narrative that dynamically shifts the conception of sin and its reversal.

### **C. The Authority of the Temple**

Ishay Rosen-Zvi has proposed that narratives of the Temple in tannaitic literature “were devised to shape the ‘original’ form of the halakhic reality, as it ought to have been and as it should be remembered...Mishnaic ritual narratives present an idyllic ritual world.”<sup>7</sup> He argues that Temple narratives act rhetorically, by pairing tannaitic textual study and cultural discourse. The method follows Foucault in order to establish how the Temple narrative functions for the rabbis. An approach that Rosen-Zvi draws upon is

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<sup>7</sup> Ishay Rosen-Zvi, trans. by Orr Scharf, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash* (Leiden: Brill, 2012), 245.

that of Moshe Simon-Shoshan, who applies assessments of narrativity to Mishnaic texts.<sup>8</sup>

Both authors' ideas lie behind my own effort to determine how the Temple acts in rabbinic narrative. My method has been to determine a deep structure behind some of the characteristics of Yoma, followed by a proposal that (at least) two ritemes create narrativity by way of their conjunction with community practice and declarative speech.

In making this philosophical argument, I take exception to claims that sacrifice was turned into "a language and a symbol that became the placeholder for practices that had nothing to do with sacrifice." Mira Balberg accuses others of making this claim, while contending that the rabbis, in fact, presented the Temple system in a concrete, non-metaphorical way, because it remained "an organizing principle of time, public life, and economy."<sup>9</sup> However, instead of arguing along with Balberg that the Temple's veracity precluded a consideration of an alternative, I would argue that the rabbis used this potent *axis mundi* to undergird practices within the community. Yes, these practices had a long-standing history, but the fact that they also originated from Temple practice enabled the rabbis to emphasize their use in a fictive Temple service in order to re-sanctify their use in the community. In doing so, they expanded holiness to the everyday realm. At the same time, Yoma upholds the deleterious effects transgression has on communities and stipulates that inter-personal repair is necessary.

I have claimed that the Temple is a concept in Mishnah Yoma. Concepts, in Kantian philosophy, are made explicit by necessary rules. The rules reported to be articulated by YHWH in the biblical corpus were shown, over the course of generations, to have

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<sup>8</sup> Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012).

<sup>9</sup> Balberg, *Blood for Thought*, 228, 230.

contingent elements. The relationship between the עולה and the חטאת, remained debatable into rabbinic times, and the divine injunction to not eat blood generated practices such as a renewal of vows in Jubilees, and the careful washing of priestly garments. Indeed, the offering of the life force in compensation for the withdrawal of the life force as an impact of sin, is a subject that emerges from covenantal discourse. The rule on blood, as Kant would have it, underwrites the cognitive assessments that it will wash away sin.<sup>10</sup>

Wilfrid Sellar's statement that "a rule, properly speaking, isn't a rule unless it *lives* in behavior, rule-regulated behavior, even rule-violating behavior,"<sup>11</sup> is particularly apt for how the rabbis understood the Temple's atoning functions. Conversant is the language, if you will, of ritual, they were able to reason *with* the Temple and the behaviors of the community. The text that they created is full of innovation.

To return to the question of why the rabbis did not create a liturgy of atonement, we must therefore appreciate what they did achieve. Returning to Sylvain Bromberger's premise that an understanding of the problem must precede the correct solution to why questions, we can see in Mishnah Yoma a study of blood application next to a variety of other practices. The tractate begins with an extended preparation rituals, focused on purity practices. While the meanings of the terms for the English "sin" only shift slightly, and the Mishnaic text is close to the biblical descriptions of the order of application, the rabbis emphasize procedure and not result: the rabbinic blood does כפר. The omission of the key effect of the application, while amplifying the three categories of

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<sup>10</sup> This is a paraphrase of Brandom, who reads Kant to conclude that Kant understood a priori principles as rules of reasoning. Brandom, *Making It Explicit*, 10.

<sup>11</sup> Italics his. Wilfrid Sellars, "Language, Rules, and Behavior" in *John Dewey: A Philosopher of Science and Freedom, a Symposium*, ed. Sydney Hook (New York: Dial Press, 1950), 315.

sins in an extended confession formula, points to a rabbinic consideration of sin: what it does and how it can be ameliorated. The High Priest's words express, as Joshua Levinson puts it, "a consensual community of values," where the focus is not on the Temple, but the community. This is further emphasized in the final mishnah, where interpersonal repair takes precedence over the atoning action of the Day itself.

Mishnah Yoma goes quite a ways towards addressing 'what' sin does, and how it can be avoided. Atonement begins by recognizing culpability, first promulgated in Lev 5, but here privileged in confession practices. Far from superseding sacrifice, it thinks about the problem of atonement through the sacrificial system, using its processes of sanctification in creative new ways.

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